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S. Hrg. 99-767

AMENDING THE REQUIREMENTS OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

COMPLETED
175.

HEARING

BEFORE THE

COMMITTEE ON FINANCE
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1822

JUNE 10, 1986

Printed for the use of the Committee on Finance

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AMENDING THE REQUIREMENTS OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

TUESDAY, JUNE 10, 1986

U.S. Senate,
Committee on Finance,
Washington, DC.

The hearing was convened, pursuant to notice, at 9:27 a.m. in room SD-215, Dirksen Senate Office Building, Hon. Bob Packwood (chairman) presiding.

Present: Senators Packwood, Danforth, Durenberger, Grassley, Long, and Baucus.

[The press release announcing the hearing, the text of S. 1822, and a description of S. 1822 by the committee staff follows:]

Finance Committee Announces Hearing on the Manufacturing Clause

Senator Bob Packwood (R-Oregon), Chairman of the Senate Finance Committee, announced that the Committee will hold a hearing on S. 1822, a bill to amend and extend the requirements of the manufacturing clause of the copyright law. The hearing will be held on Tuesday, June 10, 1986, beginning at 9:30 a.m. in Room SD-215 of the Dirksen Senate Office Building.

In announcing the hearing, Senator Packwood expressed appreciation for the Senate Judiciary Committee's agreement to the referral of S. 1822 to the Finance Committee for its consideration. Senator Packwood noted that the U.S. manufacturing clause has been the focus of a dispute with our trading partners and raises important trade policy issues.

"At a time when the effectiveness of the GATT dispute settlement mechanism is in question and there is much discussion of the need for enhanced protection of intellectual property rights within the international trading system, it is appropriate for the Finance Committee to review the trade policy reflected in S. 1822. Although the manufacturing clause is a part of U.S. copyright law, it is an expression of U.S. trade policy and, as such, deserves our careful considreation," Senator Packwood stated.

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II

99TH CONGRESS
2D SESSION

S. 1822

[Report No. 99–303]

To amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 1 (legislative day, OCTOBER 28), 1985

Mr. THURMOND (for himself, Mr. LEAHY, Mr. LAXALT, Mr. HATCH, Mr. GRASSLEY, Mr. SPECTER, Mr. MCCONNELL, Mr. SIMON, Mr. SASSER, Mr. DIXON, Mr. DANFORTH, Mr. QUAYLE, Mr. HEINZ, Mr. MURKOWSKI, Mr. DECONCINI, Mr. PROXMIRE, Mr. GLENN, Mr. MATTINGLY, and Mr. METZENBAUM) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

MAY 19, 1986

Reported by Mr. THURMOND, with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

MAY 21 (legislative day, MAY 19), 1986

Ordered, referred to the Committee on Finance for a period not to extend beyond June 11, 1986, provided, that any amendments reported by the Committee on Finance relating to the subject matter of the bill, as reported, shall be in order and that the bill be available for consideration on June 12, 1986

A BILL

To amend the Copyright Act in section 601 of title 17, United States Code, to provide for the manufacturing and public distribution of certain copyrighted material.

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Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, ~~That this Act may be cited as the "Manufacture and Public Distribution of Certain Copyrighted Material Act".~~

~~SEC. 2. (a) The heading for section 601 is amended by striking out "copies" and inserting in lieu thereof "printed material".~~

~~(b) Section 601(a) of title 17, United States Code, is amended by—~~

~~(1) striking out "Prior" through "except" and inserting in lieu thereof "Except";~~

~~(2) striking out "copies" through "literary" and inserting in lieu thereof "printed";~~

~~(3) striking out "or Canada." and inserting in lieu thereof "or unless—"; and~~

~~(4) adding at the end thereof the following:~~

~~"(1) the United States Trade Representative has certified to the Congress that the country of export currently is providing adequate and effective means under its laws for foreign nationals to secure, to exercise, and to enforce exclusive rights in copyrights; and~~

~~"(2) either—~~

~~"(A) the United States Trade Representative has certified that the country of export currently imposes no material nontariff barriers and, to the~~

~~extent inconsistent with tariff bindings entered into by the country of export with the United States, imposes no tariff barriers to trade in printed material; or~~

~~“(B) the country of export has in force a free trade agreement with the United States governing trade in printed material entered into pursuant to section 401 of the Trade and Tariff Act of 1984.~~

~~“(3) any certification made pursuant to this subsection shall be withdrawn if any of the matters certified to cease to exist.”.~~

~~(c) Section 601(b) of title 17, United States Code, is amended by striking out paragraphs (6) and (7) and inserting in lieu thereof the following:~~

~~“(6) where importation is sought for works described in, and in accordance with the requirements of, Article II, paragraph 1, of the Agreement on the Importation of Educational, Scientific and Cultural Materials (the Florence Agreement) or Article IV, paragraph 5, of the Protocol to the Agreement on the Importation of Educational, Scientific and Cultural Materials (the Nairobi Protocol).”.~~

~~(d) Section 601(c) of title 17, United States Code, is amended by striking out “or Canada” each place it appears.~~

~~(e) Section 601(d) of title 17, United States Code, is amended to read as follows:~~

~~"(d) In the event that any work is imported in violation of this section, in addition to other remedies available, an infringer shall have a complete defense in any civil action or criminal proceeding for infringement of the exclusive right to reproduce and distribute copies of the work if the infringer proves—~~

~~"(1) that copies of the work were imported in violation of this section;~~

~~"(2) that the infringing copies were manufactured in the United States; and~~

~~"(3) that the infringement was commenced before the effective date of registration for an authorized edition of the work.".~~

~~(f) Section 601(e) of title 17, United States Code, is amended by striking out "or Canada".~~

~~(g) The item relating to section 601 in the table of sections for chapter 6 of title 17, United States Code, is amended to read as follows:~~

~~"601. Manufacture, importation and public distribution of certain printed material.".~~

~~Sec. 3. This Act and the amendments made by this Act shall be effective on the date of enactment, and the provisions of section 601(a), as amended by this Act shall apply to imports on or after the date of enactment.~~

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That this Act may be cited as the "Manufacture and Public Distribution of Certain Copyrighted Material Act".

SEC. 2. Section 601(a) of title 17, United States Code, is amended by—

(1) striking out "Prior" through "except" and inserting in lieu thereof "Except";

(2) striking out "or Canada." and inserting in lieu thereof "or unless the portions consisting of such material have been—

"(1) manufactured in Canada prior to January 1, 1989; or

"(2) manufactured in a certified country on or after July 1, 1988. For the purpose of this section, a 'certified country' means a country, territory, possession, or other jurisdiction which—

"(A) the United States Trade Representative has certified to the Congress—

"(i) as providing adequate and effective means under its laws for United States nationals to secure, exercise, and enforce exclusive rights under copyright; and

"(ii) either—

"(I) as imposing no material nontariff barriers to trade in printed material; as imposing no tariff barriers to

trade in printed material that is materially inconsistent with tariff bindings, if any, entered into by such jurisdiction with the United States; and as being an adherent to the Agreement on the Importation of Educational, Scientific and Cultural Material of 1950 (the Florence Agreement) or, with respect to printed books, newspapers and periodicals, and catalogues of books and publications identified in items (i), (ii), and (viii) of Annex A to such Agreement, as imposing no tariff barrier materially inconsistent with the provisions of Article I of such Agreement if such jurisdiction is not an adherent to such Agreement; or

"(II) as having in force a free trade agreement with the United States governing trade in printed material; and as being an adherent to the Agreement on the Importation of Educational, Scientific and Cultural Material of 1950 (the Florence Agreement) or, with respect to printed books, newspapers and

periodicals, and catalogues of books and publications identified in items (i), (ii), and (viii) of Annex A to such Agreement, as imposing no tariff barrier materially inconsistent with the provisions of Article I of such Agreement if such jurisdiction is not an adherent to such Agreement and regardless of whether such tariff is permitted under the pertinent trade agreement; and

"(B) the Secretary of Labor has certified to the Congress as taking or having taken steps to afford internationally recognized worker rights, as referred to in section 502(a)(4) of the Trade Act of 1974 (19 U.S.C. 2462(a)(4)) to its workers, except that such certification by the Secretary of Labor may be waived if the President determines that such waiver is in the national economic interest of the United States.".

SEC. 3. Section 601 is amended by adding at the end thereof the following:

"(f)(1) The certification referred to in subsection (a) shall be commenced upon the initiative of the United States Trade Representative or upon petition to the United States Trade Representative by any jurisdiction or interested party.

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Such proceedings may be commenced on or after January 1, 1987, and final certification may be published at any time thereafter pursuant to the terms of this section: Provided, That no certification shall permit the importation, under clause (2) of subsection (a), of materials subject to this section manufactured prior to July 1, 1988.

"(2) Any certification made pursuant to subsection (a) shall be withdrawn by notification to the Congress given by the United States Trade Representative if the United States Trade Representative shall find that the criteria of subsection (a)(2)(A) are no longer met, or by the Secretary of Labor if such Secretary finds that the criteria of subsection (a)(2)(B) are no longer met: Provided, however, That no such withdrawal, no expiration, termination, or other cancellation of any trade agreement referred to in subsection (a)(2)(A) and no other provision of this section shall prevent the importation or distribution of any copies manufactured prior to the effective date of such withdrawal or cancellation, or the importation or distribution of any copies manufactured following such effective date in a country referred to in subsection (a) pursuant to any contract, agreement, or understanding entered into, or reasonable expectation relied upon, prior to such effective date and imported during a period of 24 months following such date. The terms of the foregoing proviso shall apply equally to the importation and distribution on

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or after January 1, 1989 of copies manufactured in Canada, in the event that on such date Canada is not a certified country.

"(3) Any proposed certification, or notification of withdrawal made pursuant to this section shall be published promptly in the Federal Register by the United States Trade Representative and opportunity for public comment shall be afforded to interested parties. For purposes of this section, interested parties shall not necessarily be limited to parties with a material interest in the certification or notification of withdrawal of a jurisdiction. No certification or notification of withdrawal shall become final until at least 30 days following publication of such notice in the Federal Register.

SEC. 4. (a) Section 601(b)(6) of title 17, United States Code, is amended by striking out "or Canada" and inserting in lieu thereof "or, during the applicable period, Canada or a certified country".

(b) Section 601(c) of title 17, United States Code, is amended by striking out "or Canada" each place it appears, and inserting in lieu thereof "or, during the applicable period, Canada or a certified country".

(c) Section 601(d)(2) of title 17, United States Code, is amended by striking out "or Canada".

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(d) Section 601(d)(3) of title 17, United States Code, is amended by striking out "or Canada" and inserting in lieu thereof ", Canada or a certified country".

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United States Senate
COMMITTEE ON FINANCE
WASHINGTON, DC 20510

June 9, 1986 Corrected

MEMO

TO: MEMBERS, FINANCE COMMITTEE

FROM: FINANCE COMMITTEE TRADE STAFF (LEN SANTOS, 4-3472)

SUBJECT: JUNE 10, 1986 HEARING ON S. 1822, A BILL TO EXTEND THE MANUFACTURING CLAUSE

The Finance Committee will conduct a hearing on June 10, 1986 at 9:30 a.m. on S. 1822, a bill reported by the Judiciary Committee to amend and extend the manufacturing clause of the copyright laws. By unanimous consent, the bill has been referred to the Finance Committee through June 11, 1986, at which time the Committee is automatically dischared from further consideration of the bill. The hearing will be held in SD-215 of the Dirksen Senate Office Building. A witness list is attached.

I. Current Law

The Copyright Act of 1976, 17 USC section 601, requires, with certain exceptions, that copies of works (1) preponderantly of nondramatic literary material, (2) in the English language, (3) by U.S. citizens or domiciliaries, and (4) of copyrightable material, be manufactured in the United States or Canada in order to obtain U.S. copyright protection. This provision, known as the manufacturing clause, does not cover dramatic,

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musical, multilingual or pictorial works. Other exceptions to the manufacturing clause permit importation of 2,000 copies of a given work, of works imported for government use and of works in braille. In short, books in English by U.S. authors must be manufactured in the U.S. or Canada in order to enjoy the full remedies provided by U.S. copyright law in an action for infringement of the rights of reproduction or distribution.

The manufacturing clause expires on June 30, 1986.

II. History of the Manufacturing Clause

Until 1891 the American copyright law did not permit U.S. copyright to be obtained by foreigners, and thus foreign works could be freely pirated in the United States. With the increased popularity of the novel beginning in the 18th century, more and more English novels by authors such as Scott, Bulwer, and Dickens were reprinted by United States printers without permission or payment to the author. Beginning in the 1830's, British authors began importuning Congress to stop this pirating and to provide U.S. copyright protection to foreigners. In 1837 Senator Henry Clay presented to the Senate the British Author Petition requesting that they be granted U.S. copyright protection. The petition was signed by 56 of the best-known English writers, including Edward Bulwer-Lytton, Thomas Carlyle, Benjamin Disraeli, Maria Edgeworth, Harriet Martineau, Robert Southey, and Thomas Moore. Clay also presented a petition at this time by American authors, which pointed out that they found it hard to get paid for their work in competition with the well-known writers of England whose writings were published without royalty cost by United States printers and publishers. Opposition to granting copyright to foreign authors by United States printers and printing trade unions was intense and carried the day until 1891. During this period, of course, the U.S. copyright law was not a trade barrier since foreign works could be imported freely subject only to the tariff -- import duties constituted the sole trade barrier.

With the passage of the Platt-Simmonds Act in 1891, a compromise was reached in three areas. This law gave United States printers, publishers, and labor unions a different form of protection from the competition of foreign editions, it gave foreign authors the opportunity to secure U.S. copyright, and it provided United States authors some protection against the competition of cheaper foreign editions with their own works. The compromise device was the "manufacturing clause"" in the 1891 act, which permitted foreign authors in countries granting reciprocal privileges to

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secure U.S. copyright, but only if their books were printed from type set in the United States. After a U.S. copyright was thus obtained for a foreign book, the law made it illegal for foreign editions of that book to be imported.

The manufacturing clause remained in the U.S. copyright law essentially unchanged until 1954, except for two minor liberalizations: One in 1909 exempted books in foreign languages (but also included periodicals and required that plate making for and binding of books be done in the United States). The second, in 1949, permitted an ad interim U.S. copyright for 5 years to be obtained before manufacture in the United States was required and allowed the importation of up to 1,500 copies of the foreign edition. Then, in 1954 a major change was made with the adherence of the United States to the Universal Copyright Convention (UCC), which required the United States to eliminate the manufacturing clause for works of authors from other countries adhering to the convention. The manufacturing clause was thus limited in its application to United States authors, who would lose their U.S. copyright (other than on an ad interim basis) if they first published abroad. The printing trade unions vigorously opposed United States accession to the Universal Copyright Convention, as did the book manufacturers until almost the very end of the legislative process; however, Congress was persuaded that adherence to the UCC was in the overall United States interest and that fears of severe economic injury to printers and their employees were unfounded. By then the United States had a large surplus of book exports over imports.

In a major revision of U.S. copyright laws enacted by Congress in 1976, Congress authorized the repeal of the manufacturing clause effective July 1, 1982. This represented a compromise between the House Judiciary Committee's preference for the expiration of the manufacturing clause and the Senate Judiciary's desire for its extension. As a result of this compromise, Senators McClelland and Scott requested the Register of Copyright to assess the economic impact of eliminating the manufacturing clause, and the Register concluded in July of 1981 that the clause should be allowed to expire in 1982.

The rationale for this conclusion was that there was no reason to continue a century of discrimination against copyright holders of works of art, musical compositions, dramatic works, sound recordings and motion pictures who were not protected under the manufacturing clause, that there was little likelihood of harm to the American industry from termination of the manufacturing clause, and that much of the output of the

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U.S. printing industry was not, in any event, constrained by the clause. The Register concluded that if harm to the industry should result from the expirations of the manufacturing clause, mechanisms (presumably trade relief laws) were available to protect those interests without restricting the freedom of choice of American copyright holders.

In the midst of the 1982 recession and apparently in response to rising unemployment, Congress enacted H.R. 6198, which extended the manufacturing clause through July 1, 1986. On July 8, 1982, President Reagan vetoed H.R. 6198 as no longer necessary to protect an efficient industry and as inconsistent with U.S. international obligations. Despite the President's objections, Congress voted to override the President's veto on July 13, 1982, by a Senate vote of 84-9 and a House vote of 324-82.

The 1976 extension of the manufacturing clause exempted printed material imported from Canada. This exemption was based on the Agreement of Toronto (see attachment 1) between the U.S. and Canadian printing and publishing industries, by which the U.S. industry promised to urge Congress to exempt Canada from the manufacturing clause in exchange for the Canadian industry urging its government to accept the Florence Agreement, providing for the duty-free flow of educational, scientific, and cultural materials. Both sides pledged that in striking this balance successfully they would work to eliminate remaining barriers to trade in printed materials.

III. GATT Ruling against the Manufacturing Clause

The General Agreement on Tariffs and Trade (GATT) generally prohibits quantitative restrictions on imports. The United States notified the GATT, in 1954, that the manufacturing clause was inconsistent "existing legislation," excepted from U.S. GATT obligations by the Protocol of Provisional Application. In effect, the U.S. notified the GATT that the manufacturing clause was "grandfathered." During the Tokyo Round of the Multilateral Trade Negotiations (1973 to 1979), the European Communities (EC) asked that the clause be included in the non-tariff trade barrier negotiations. U.S. representatives indicated that the clause had been narrowed considerably over the years and, under the 1976 amendment of the U.S. copyright law, would expire in July 1982. Based on the U.S. statement, the EC dropped the request.

When the clause was extended in 1982, the EC asked to have a GATT panel review the extension. The United States told the panel that the manufacturing clause was "grandfathered" and, therefore, our GATT obligations did

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not apply. We pointed to the 1954 notification as evidence of the clause's "grandfathered" status. The GATT panel rejected the U.S. position.

In May 1984, the GATT Council adopted the panel's report. It concluded that the 1982 extension of the manufacturing clause was new legislation, unprotected by the exception for "existing legislation" provided in paragraph 1(b) of the GATT Protocol of Provisional Application. In other words, the extension did not have "grandfathered" status. The Council recommended to the United States that it bring its practice into conformity with GATT within a reasonable time.

Under Article XXIII, paragraph 2 of GATT, the Contracting Parties can authorise a signatory to withdraw concessions it has given to another signatory if the Contracting Parties "consider that the circumstances are serious enough to justify such action." In response to proposals in Congress to extend the manufacturing clause in spite of the GATT finding, the EC in March, 1986 did ask the GATT for authority to suspend the application of concessions towards the U.S. equivalent to the economic damage caused to the EC in the event GATT-inconsistent legislation were enacted. The EC estimates its trade lost as a consequence of the manufacturing clause at between $300-$500 million.

Initial targets for EC retaliation against U.S. exports are paper, machinery for the paper and printing industry, tobacco, machinery for the tobacco industry, machinery for the textile industry, and chemicals (See attachment 2). During the May 1986 GATT Council meeting, the EC stated its intention to retaliate "within weeks" of the extension of the manufacturing clause beyond June 30, 1986.

IV. S. 1822

On May 19, 1986, the Judiciary Committee reported S. 1822.

S. 1822:

1. Extends the manufacturing clause permanently.
2. Removes the Canadian exemption after January 1, 1989, subject to the conditions in paragraph 3.
3. Effective July 1, 1988, provides for waivers allowing imports from countries which:

- the USTR certifies have no material tariff or non-tariff barriers to U.S.-printed products, and which adequately protect U.S. intellectual property rights, and
- the Secretary of Labor certifies have extended internationally-recognized worker rights (this

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requirement may be waived by the President if determined to be in the national economic interest).

V. The Printing Industry and Employment

Shipments in the printing and publishing industries were valued at $100 billion in 1984.

Commercial printing and newspapers are the dominant sectors within the printing and publishing industries, in terms of value of shipments.

With total employment of 1.4 million persons in 1984, the printing and publishing industries are one of the ten largest employers in the manufacturing sector, accounting for over 7 percent of manufacturing employment. Commercial printing accounted for 34.1 percent of employment in this sector, while book printing accounted for 1.9 percent of employment.

The employment effects of eliminating the manufacturing clause have been estimated in various studies. Materials covered by the clause account for a small portion of the output of the printing industry.

A 1986 Department of Labor study estimates that elimination of the Clause could affect between 900 to 23,000 job opportunities (job opportunities lost do not necessarily translate into the loss of existing jobs) in

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the printing and publishing industries. This represents less than two percent of nearly 1.4 million workers now employed in these industries.

Previous studies on the termination of the Clause have provided a range of employment opportunity / loss estimates:

- U.S. International Trade Commission (1983): 732 to 3,526 job opportunities;
- Congressional Research Service (1981): 5,000 to 9,000 job opportunities;
- E. Wayne Nordberg for the printers (1977): 21,000 job opportunities;
- E. Wayne Nordberg for the printers (1981): 14,000 job opportunities;
- Edward V. Donahue for the printing unions (1979): 40,000 job opportunities;
- Department of Labor (1981): 77,600 to 172,200 job opportunities.

Attachment 3 contains tables on employment and production in the printing industry by state.

(TED-0291)

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The CHAIRMAN. The hearing will come to order. We are having a 1-day hearing on the manufacturing clause today. We will have a markup on this bill tomorrow; and we are delighted to have as our first witness, Hon. Charles McC. Mathias, Jr., the very distinguished senior Senator from the State of Maryland. Senator Mathias.

STATEMENT OF HON. CHARLES McC. MATHIAS, JR., A U.S. SENATOR FROM THE STATE OF MARYLAND

Senator MATHIAS. Thank you, Mr. Chairman. Thank you for giving me an opportunity to start so promptly this morning. Your committee has before it a bill which proposes to make permanent the manufacturing clause of the Copyright Act. I might explain that my particular interest in this is as the chairman of the Subcommittee on Patents, Copyrights and Trademarks of the Judiciary Committee; and we have been watching this very closely.

There is no dispute that the manufacturing clause is a trade barrier dressed up as a copyright provision. So, I think it is important that the Senate have the Finance Committee's views on it before we act.

I am sure, Mr. Chairman, that you will hear a great deal of testimony today from the perspective of economics and trade and international relations; but since the fate of the manufacturing clause will have its direct impact on authors—Americans who write, Americans who earn their living by writing—we ought to begin with an admonition by one of America's most celebrated poets, Robert Frost, who wrote:

"Before I built a wall, I would ask to know what I was walling in or walling out and to whom I would like to give offense."

The manufacturing clause walls American authors into a state of isolation in the world. It walls American business out of the international trading system, and it gives offense to those who should be our allies in both trade and copyright.

The domestic manufacture requirement for books is an anomaly in the law. It has no parallel with respect to works of graphic art or musical compositions or dramatic works or sound recordings or motion pictures. American inventors are not required to manufacture their inventions here in order to get a patent protection. Trademark holders can receive protection for their marks, no matter where the goods that bear them are made.

The manufacturing clause is a major impediment to U.S. adherence to the Berne Convention, which is the premier international copyright agreement; and this is of great concern to our subcommittee. Hearings before the subcommittee have demonstrated a public and a private consensus in general support of U.S. adherence to the Berne Convention and the copyright standard that it sets. Unless we join, we cannot fully benefit from nor help to shape the development of international copyright laws in ways that are vital to our long-term interest, particularly as we become more and more a service-oriented economy.

Further extension of the manufacturing clause also undermines our negotiating positions when we try to encourage other nations, particularly the Pacific rim nations, to enact strong intellectual property laws. This bill sets a double standard in maintaining in our law a provision that we would find unacceptable in the laws of any other country.

Extension of the clause is a prescription for stagnation of these negotiations. Thus, the extension of the manufacturing clause runs counter to the thrust of our most important initiative aimed at promoting respect for copyright worldwide.

As you know, Mr. Chairman, the manufacturing clause has a similar impact on our trade policy. As we work to strengthen and improve the enforcement of the legal standards established by GATT, the perpetuation of the manufacturing clause, which is an undisputed GATT violation, would brand us as not much better than a scofflaw, if not an outlaw, among the trading nations. Its very presence invites retaliation

And I am sure you will be advised, Mr. Chairman, of the kind of specific retaliation that lies in wait. I believe that once you have examined the clause and the damage that it does to our copyright position and to our trade relations, your answer to the question asked by Robert Frost will be the same as Robert Frost's own answer: "Something there is that doesn't love a wall, that wants it down."

And I believe, Mr. Chairman, this wall ought to come down.

The Chairman. Mac, give me a little bit of history in the Judiciary Committee. I don't recall that this was referred to Finance in 1982, and I know it passed, and passed Congress overwhelmingly, but I think the President vetoed it; and then the veto was overridden. Did it come out of Judiciary by an overwhelming vote this time, even over your opposition?

Senator Mathias. It came out with a substantial majority. We didn't take a record vote on it, which tells you something in itself; but the vote in the Senate, when it was renewed the last time, was shameful. The President only got nine votes for his position.

The Chairman. I sense a change of opinion or climate, though, between now and then that I just didn't pick up then. I am not even sure that we asked that it be referred to this committee in 1982, even though those are clear trade implications—and doubly so now with the alleged—not the alleged—the fact that it is a GATT violation, pure and simple. Your statement that we are not just a scofflaw, but an outlaw, is a very good statement.

We are in violation of the GATT; we know we are in violation if we pass this; and passage of this bill would indicate that we don't care if we are in violation.

Senator Mathias. That is right; and we just did it, anyway. That is the position we are in, and that is the position that I think ought to be terminated.

The Chairman. Mac, I share your views. I hope this committee will be somewhat less hospitable to this bill than Judiciary, but in any event, we have to report it out by tomorrow. We are discharged of it; and I appreciate very much your coming.

Senator Mathias. I think we can improve our intellectual property position in the world if we take the proper action on this. I am glad to see the distinguished Secretary of Commerce here, and I know that he will be able to advise the committee well and wisely.

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The CHAIRMAN. We have secretaries and ambassadors and Senator Evans all here this morning, and I believe that Senator Evans is ready; and we are ready to hear him.

[The prepared written statement of Senator Mathias follows:]

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TESTIMONY OF SENATOR CHARLES McC. MATHIAS, JR.
ON EXTENSION OF THE MANUFACTURING CLAUSE, S. 1822
BEFORE THE SENATE FINANCE COMMITTEE
JUNE 10, 1986

Thank you for this opportunity to testify on S. 1822, a bill to make permanent the manufacturing clause of the Copyright Act.

There's little dispute that the clause is a trade barrier in copyright dress, so it's appropriate that the Senate have the benefit of the Finance Committee's views on it before we act.

You will hear a great deal of testimony this morning from the perspectives of economics, trade, and international relations. But since the fate of the manufacturing clause will have its most direct impact on American authors, we should begin with the admonition of one of America's most celebrated poets, Robert Frost, who wrote:

> "Before I built a wall I'd ask to know
> What I was walling in or walling out,
> And to whom I was like to give offense."

The manufacturing clause walls American authors into isolation, walls American business out of the international trading system, and gives offense to those who should be our allies in both trade and copyright.

Mr. Chairman, as Chairman of the Subcommittee on Patents, Copyrights and Trademarks, I can assure you that the domestic manufacturing requirement for books is an anomaly in our law. It has no parallel with respect to works of graphic art, musical compositions, dramatic works, sound recordings or motion

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pictures. U.S. inventors are not required to manufacture inventions here to obtain patent protection. Likewise, trademark holders may receive protection for their marks no matter where the goods that bear them are made.

The manufacturing clause is a major impediment to U.S. adherence to the Berne Convention, the premier international copyright agreement. Hearings before our subcommittee have demonstrated a public and private consensus in general support of U.S. adherence to the Berne Convention and the copyright standard it sets. Unless we join we cannot fully benefit from nor help shape the development of international copyright laws in ways that are vital to our long-term economic interests.

Further extension of the manufacturing clause also undermines our negotiating position when we try to encourage other nations, particularly along the Pacific Rim, to enact strong intellectual property laws. S. 1822 sets a double standard, maintaining in our law a provision we would find unacceptable in the law of another country. Extension of the clause is a prescription for stagnation in these negotiations. So this extension of the manufacturing clause runs counter to the thrust of our most important initiatives aimed at promoting respect for copyright worldwide.

As you know, it has a similar impact on our trade policy. Even as we work to strengthen and improve enforcement of the legal standards established by the GATT, the perpetuation of the manufacturing clause -- an undisputed GATT violation -- would brand us as a scofflaw, if not an outlaw, among the trading nations. Its very presence in our law invites retaliation.

I believe that, once you have examined the manufacturing clause, and the damage it causes to our copyright and trade relations, your answer to Frost's question will be the same as the poet's:

"Something there is that doesn't doesn't love a wall,
That wants it down,"

This wall should at long last be allowed to come down.

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STATEMENT OF HON. DANIEL J. EVANS, U.S. SENATOR FROM THE STATE OF WASHINGTON

Senator Evans. Thank you, Mr. Chairman. I ask that my full written statement be entered into the record.

The Chairman. Without objection.

Senator Evans. I appreciate the opportunity to testify before the Finance Committee today on the subject of the manufacturing clause. The legislation you are considering has some urgency due to the scheduled expiration of the manufacturing clause in about 2½ weeks, on June 30. I am appearing in strong opposition to S. 1822 and to any extension of the manufacturing clause beyond this date.

Mr. Chairman, this simply is no longer necessary. In fact, I think it should have been repealed long ago. If we don't gather our courage and repeal it, the clause will soon be celebrating its 100th anniversary in 1991. It has been amended substantially five times since 1891, the last time being in 1976. Yes, most of those amendments did narrow the scope of the manufacturing clause. In 1976, the last time Congress substantially amended the clause, we provided for the first time a clear date for expiration, 1982; but that date didn't stick, and we provided another 4 years, which brings us to where we stand today.

There are compelling reasons, I believe, why any extension makes no sense for U.S. trade policy. As Ambassador Yeutter will outline for you later, the United States is entering into an important round of multilateral negotiations. These negotiations will determine the international trade rules for the remainder of this century.

One of the focuses of those negotiations will be to reduce the distortions created by pirating, infringements on U.S. intellectual property rights abroad, such as copyrights, trademarks, and patents. The U.S. position will hardly be credible if we enter the negotiations with a GATT-illegal provision which was grandfathered into the GATT protocol and provisional application in 1947.

Foreign countries will correctly ask: Why should we begin to negotiate down a one-way street? How can we have a credible position if we ignore the ruling by the GATT panel in May 1984 that our manufacturing clause was a violation of GATT and inconsistent with its other provisions? The European Community brought a complaint before GATT in 1983 after the Congress overrode President Reagan's veto in July 1982. The Community's complaint was vindicated by the ruling of the GATT panel. Our Government assured the Community that the clause would indeed expire in 1986, which persuaded the European Economic Community countries to back down from requesting compensation or a suspension of obligations in 1984.

Therefore, Mr. Chairman, I hardly think this is an appropriate bargaining chip to use in continuing trade negotiations. How can you have a chip when all the other players know that the referee has already removed your chips from the table? This GATT panel's decision is no secret. The threat of retaliation is no secret, either. They have shrewdly selected certain targets for retaliation, and many of our offices and yours, I am certain, have heard from representatives of affected industries pleading to refrain from an extension.

This is not a distressed industry—100,000 new jobs were created in the industry in the years from 1982 to 1984, which I detail more fully in my testimony. I believe the President already has more than adequate authority under section 301 to take vigorous action against those countries that impair our rights of commerce and trade in intellectual property. Ambassador Yeutter has already undertaken a host of self-initiated section 301 actions over the past 9 months against many of the countries that have such practices, particularly the East Asian NIC's.

I should add that I suspect several of our trading partners wish they had such broad authority to retaliate against U.S. laws, which impair their trading rights such as the manufacturing clause.

Finally, Mr. Chairman, let me give a somewhat different perspective as a former college president. Our educational institutions are founded on the basis of the free exchange of ideas among all groups and races. Of course, the printed word is one of the most precious expressions of all collective ideas. The United States is the leader in the world in inviting foreign students to our country and introducing them to our form of government and our communities. We should continue to be the leader in promoting the free exchange of the printed word through the unrestricted trade of educational and scientific publications.

In my view, we should allow the freest exchange of goods and services in this sector. We already have the Florence agreement which was negotiated under the auspices of the United Nations in 1950 to encourage the free flow of books. And it states that the contracting States undertake not to apply Customs duties or other charges on or in connection with the importation of books, publications and educational, scientific and cultural materials.

Mr. Chairman, I think it is time for us to take the leadership in adhering to the spirit of this agreement by terminating the manufacturing clause. The world needs to see credible and vigorous leadership from the United States toward creating a more liberal trading system as we head into a new GATT round. I believe, Mr. Chairman, this is an excellent place to start.

The CHAIRMAN. Senator, I agree with you completely, and I hope we follow your advice. Senator Danforth.

Senator DANFORTH. No questions, Mr. Chairman.

The CHAIRMAN. Dan, thank you very much.

Senator EVANS. Thank you, Mr. Chairman.

The CHAIRMAN. Next, we will hear the Hon. Malcolm Baldrige, the Secretary of Commerce, who has appeared before this committee on a number of other occasions, always with brilliance.

Good morning, Mr. Secretary.

[The prepared written statement of Senator Evans follows:]

STATEMENT OF SENATOR DANIEL J. EVANS
ON THE MANUFACTURING CLAUSE
BEFORE THE SENATE FINANCE COMMITTEE

June 10, 1986

Mr. Chairman, I appreciate the chance to testify before the Finance Committee today on the subject of the manufacturing clause. The legislation you are considering, S. 1822 reported by the Judiciary Committee, has some urgency due to the scheduled expiration of the manufacturing clause in about two and a half weeks on June 30th. I am appearing in strong opposition to S. 1822 and to any extension of the manufacturing clause beyond this date.

Mr. Chairman, the manufacturing clause simply is no longer necessary. In fact, I believe it should have been repealed long ago. If we don't gather our courage and repeal it, the clause will soon be celebrating its 100th birthday in 1991. It has been amended substantially five times since 1891, the last time being in 1976. Yes, most of those amendments narrowed the scope of the manufacturing clause. But in 1976, the last time the Congress substantially amended the clause, we provided for the first time a clear date for expiration of the clause — 1982. But that date didn't stick, and we provided another four years. Which brings us to where we stand today.

But the manufacturing clause demonstrates vividly the contradictions of legislation enacted to protect an "infant industry" but never given a time-certain sunset to expire. Protection from imports becomes an opium that's difficult to divorce oneself from cleanly. In that regard, it's interesting to note that the clause was suspended to allow unlimited imports of English publications for the St. Louis World's Fair of 1904. Also, the clause today allows unlimited importation of books and printed materials for governmental uses. But educational institutions such as school and universities have to purchase their printed materials in the United States, or after 1978, in Canada as well. These are idiosyncrasies that have no logic, but are symbolic of industries that have been protected too long.

There are other compelling reasons why any extension of the clause makes no sense for a U.S. trade strategy. As Ambassador Yeutter will outline for you later, the United States is entering into a very important round of multilateral negotiations. These negotiations will determine the international trade rules for the remainder of this century. One of the focuses of those negotiations will be to reduce the distortions created by pirating and infringements on U.S. intellectual property rights

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abroad such as copyrights, trademarks, and patents. The U.S. position will hardly be credible if we enter the negotiations with a GATT-illegal provision which was grandfathered into the GATT Protocol on Provisional Application in 1947. Foreign countries will correctly ask: Why should we begin to negotiate down a one-way street?

Another focus of the new GATT round, as you know, will be improving the GATT procedures for dispute settlements. How can we have a credible position if we ignore the ruling by the GATT panel in May, 1984 that our manufacturing clause was a violation of Article 11 of the GATT and inconsistent with other provisions of the GATT. The European Community brought a complaint before the GATT in 1983 after the Congress overrode President's Reagan's veto in July, 1982 to extend the clause for another four years. The Community's complaint was vindicated in the ruling by the GATT panel. Our government assured the Community that the clause would indeed expire in 1986, which persuaded the EC countries to back down from requesting compensation or a suspension of obligations in 1984.

For that reason, Mr. Chairman, the manufacturing clause is not a "bargaining chip," as some appear to be alleging. Such an argument creates a paper tiger. How can you have a chip when all the other players know that the referee has already removed your chips from the table? This GATT panel's decision is no secret. And the threat of retaliation from the Community is no secret, either. They have already shrewdly targeted certain sectors for retaliation. Already, many of our offices have heard from the lobbyists of those affected industries pleading to refrain from an extension.

For those countries that impair our rights of commerce and trade in intellectual property, I should add that the President already has more than adequate authority under Section 301 to take vigorous action. This is a very broad statute that can be used to remedy a variety of unfair and discriminatory practices in foreign countries. Ambassador Yeutter has undertaken a host of self-initiated Sec. 301 actions over the past 9 months against many of the countries that allegedly have such practices, such as the East Asian NIC's. I should add that I suspect several of our trading partners wished they had such broad authority to retaliate against a U.S. law like the manufacturing clause which impaired their trading rights.

Mr. Chairman, I don't intend my remarks to be insensitive to the legitimate needs of the publishing and printing industry in this country. There will undoubtedly be some impacts in production and employment with the termination of the

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manufacturing clause. Some will be negative, some will be positive. Certainly, the reduced value of the dollar vis-a-vis the major currencies should stimulate exports. But the fears of extensive job losses have been exaggerated, in my view, which the recent Department of Labor study has clearly supported.

The printing and publishing industries have matured greatly since 1891. We are now the world's largest exporter of printed matter — about $1.4 billion -- surpassing Germany in 1981. It is a modern industry that consists of many different sectors, from commercial printing to professional bookbinding. It has introduced a great deal of modern technology over the past decade and has shown a respectable productivity growth of 1.5 percent during that period. Total employment has grown to about 1.4 million workers, which account for 7 percent of manufacturing employment. And there has been an increase in jobs--about 100,000-- in the industry from 1982 to 1984, with thousands more being created in 1985 and this year. Most of these jobs have been created in the fast-growing sectors of newspaper, miscellaneous publishing, and commercial printing. On balance, Mr. Chairman, it appears to be a healthy and vibrant industry.

Finally, Mr. Chairman, let me give my perspective as a former college president. Our educational institutions are founded upon the basis of a free exchange of ideas among all groups and races. Of course, the printed word is one of the most precious expressions of our collective ideas. The United States is the leader in the world in inviting foreign students to our country and introducing them to our form of government and our communities. We should continue to be the leader in promoting the free exchange of the printed word through the unrestricted trade of educational and scientific publications. In my view, we should allow the freest exchange of goods and services in this sector. We already have the Florence Agreement which was negotiated under the auspices of the United Nations in 1950 to encourage the free flow of books. It states: "The Contracting States undertake not to apply customs duties or other charges on, or in connexion with, the importation of: books, publications, and educational, scientific and cultural materials."

Let us take the leadership in adhering to the spirit of this agreement by terminating the manufacturing clause. It is an anachronism of the late 1800's that has survived far too long already. Our domestic printing and publishing industry is not suffering great distress. And the world needs to see credible and vigorous leadership from the United States toward creating a more liberal trading system as we head into the new GATT round. This is an excellent place to start.

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STATEMENT OF HON. MALCOLM BALDRIGE, SECRETARY OF COMMERCE, WASHINGTON, DC

Secretary **BALDRIGE**. Good morning, Mr. Chairman. That may be the first untrue statement I have ever heard you make. [Laughter.]

Mr. Chairman, I am pleased to be here today to discuss S. 1822, a bill that extends the manufacturing clause. Its main effect is to deny copyright protection to U.S. authors unless they have their books, with certain exceptions, printed in the United States.

It is protectionist. The administration opposes any bill that allows it to remain on the books beyond its scheduled expiration date. I will recommend to the President that he veto this or any other bill that extends it.

The clause was added to the law in 1891 as part of an arrangement with the printing industry. At that time, our copyright law did not protect foreign authors.

Printers and publishers copied their works freely and paid no royalties. The United States was known as the Barbary Coast of literature. When we amended the law to protect foreign authors, the printers lost their ability to get something for nothing. Now, they would have to face tough foreign competition, so they insisted that all books be made from plates typeset in the United States.

Whatever justification existed back then, none exists today. But every time we talk about ending the clause, the printers predict disaster. We performed some major surgery on it back in 1954 when we exempted works of foreign authorship from its requirements. They predicted that our markets would be flooded by cheap imports, and that fear obviously never materialized.

Today, the clause is an outright embarrassment to us. We pleaded with countries to protect foreign intellectual property, just as foreign authors once plead with us. We pleaded with them to open their markets. Some have whole industries that thrive on their ability to steal American ingenuity. We expect them to stand up to their domestic interests and do what is right; the clause gives them an excuse not to do so.

Moreover it places us in direct violation of our GATT obligations. We simply cannot afford to ignore that GATT decision. Contrary to what some would think, the decision makes a lot of sense. No nation can announce that it will bring its laws into compliance with GATT requirements and encourage other nations to accept its word, which is what we did in the 1979 Multilateral Trade Negotiations, and then reverse our course. That is completely inconsistent with the GATT goal of promoting stability and predictability in trade relations.

Ignoring the GATT decision would be foolish for other reasons. There are many pressing intellectual property issues that have to be resolved. Are patent and copyright terms long enough? Are all commercially important goods patentable? Is software adequately protected? What about semiconductor chips, pharmaceuticals? What happens as more and more software gets on semiconductor chips? What about agricultural chemicals?

A comprehensive agreement on intellectual property under GATT ought to be one of our most important goals. Let's not jeopardize that by showing the GATT members that we don't care what they think.

Mr. Chairman, I will simply say that subjecting ourselves to these problems for the sake of the manufacturing clause would be a serious mistake. The U.S. printing industry doesn't need it. Study after study has discounted its predictions of severe economic dislocation. It is growing by about 13,000 jobs a year. It has a lot of advantages. It is technically sophisticated. Paper is cheaper here. Some printing has to be done fast; it can't be sent abroad. Ocean transport is expensive and it is simplistic to assume that the small foreign labor cost differential will always be decisive. In short, the Congress would do better to worry about jobs in the industries targeted for retaliation.

The Senators who dissented from the Judiciary Committee's report on this bill said it best: The manufacturing clause walls American authors into isolation, walls American business out of the international trading system, and gives offense to those who should be our allies in both trade and copyright. It should be allowed to expire.

Thank you, Mr. Chairman.

The Chairman. Thank you, Mr. Secretary. Senator Danforth.

Senator Danforth. Mr. Chairman, I have some comments I would like to make. I am not sure whether Secretary Baldrige or Ambassador Yeutter is the appropriate sounding board. I hate to call anybody a "sounding board," but who would be the best responder to my comments?

Secretary Baldrige. Senator, if I may——

Senator Danforth. Are you departing?

Secretary Baldrige. I have another Senate hearing in just a few minutes upstairs on foreign corrupt practices.

Senator Danforth. As I was about to say, I think Ambassador Yeutter would be the——

[Laughter.]

Secretary Baldrige. Ambassador Yeutter is the man. Thank you.

The Chairman. Senator Baucus, do you have any opening statement?

Senator Baucus. No; that sounds great.

The Chairman. Thank you. Ambassador Yeutter.

[The prepared written statement of Secretary Baldrige follows:]

STATEMENT OF
SECRETARY OF COMMERCE MALCOLM BALDRIGE
BEFORE THE
COMMITTEE ON FINANCE
UNITED STATES SENATE
JUNE 10, 1986

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MR. CHAIRMAN, I AM PLEASED TO BE HERE TODAY TO DISCUSS S. 1822, A BILL TO EXTEND THE MANUFACTURING CLAUSE. THE MANUFACTURING CLAUSE DENIES COPYRIGHT PROTECTION TO U.S. AUTHORS UNLESS THEY HAVE THEIR BOOKS, WITH CERTAIN EXCEPTIONS, PRINTED IN THE UNITED STATES OR IN CANADA. IT ALSO APPLIES TO NEWSPAPERS, PERIODICALS AND NEWSLETTERS. IT IS BLATANTLY PROTECTIONIST.

THE ADMINISTRATION OPPOSES ANY BILL THAT ALLOWS THE MANUFACTURING CLAUSE TO REMAIN ON THE BOOKS ONE DAY BEYOND ITS SCHEDULED EXPIRATION DATE OF JUNE 30. I WILL RECOMMEND TO THE PRESIDENT THAT HE VETO THIS OR ANY OTHER BILL THAT EXTENDS IT.

LET'S REMEMBER WHY THE MANUFACTURING CLAUSE BECAME PART OF OUR LAW. FROM 1790, WHEN OUR FIRST COPYRIGHT LAW WAS PASSED, UNTIL THE END OF THE 19TH CENTURY, THE UNITED STATES PROVIDED NO COPYRIGHT PROTECTION TO FOREIGN AUTHORS. THESE AUTHORS, PARTICULARLY BRITISH AUTHORS OF THE VICTORIAN ERA, WERE ENORMOUSLY POPULAR WITH AMERICAN AUDIENCES. WITHOUT COPYRIGHT PROTECTION, THEIR WORKS WERE FREELY COPIED AND DISTRIBUTED. FEW, IF ANY, ROYALTIES WERE EVER PAID.

U.S. AUTHORS SUFFERED TOO. AS LONG AS THE VICTORIAN WRITERS WERE POPULAR AND THEIR WORKS COULD BE REPRODUCED WITHOUT PAYING ROYALTIES, PRINTERS AND PUBLISHERS HAD LITTLE INCENTIVE TO TAKE CHANCES ON NATIVE WRITERS WHO WERE NOT WELL-KNOWN. AS A RESULT, THE DEVELOPMENT OF AMERICAN LITERATURE SUFFERED.

THINGS GOT SO BAD THAT THE OLD SENATE COMMITTEE ON PATENTS WAS FORCED TO ADMIT, AS FAR BACK AS 1888, THAT THE UNITED STATES HAD BECOME THE "BARBARY COAST OF LITERATURE." IN 1891 CONGRESS FINALLY GOT AROUND TO CORRECTING THIS INJUSTICE BY AMENDING THE COPYRIGHT LAW TO PERMIT FOREIGN NATIONALS TO OBTAIN COPYRIGHT PROTECTION IN THE UNITED STATES. THE PRICE OF THE PRINTERS' AGREEMENT WAS A NEW REQUIREMENT THAT ALL COPYRIGHTED BOOKS BE MADE FROM PLATES THAT WERE TYPESET IN THE UNITED STATES.

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IN SHORT, THE MANUFACTURING CLAUSE WAS LITTLE MORE THAN AN EXCHANGE FOR TAKING AWAY FROM THE PRINTING INDUSTRY ITS OPPORTUNITY TO GET SOMETHING FOR NOTHING. WE HAVE LONG SINCE REPAID WHATEVER DEBT WE OWED FOR PERMISSION TO EXTEND COPYRIGHT PROTECTION TO FOREIGN AUTHORS.

THE CLAUSE HAS BEEN SCALED BACK CONSIDERABLY SINCE 1891. ITS DEFENDERS HAVE USUALLY PREDICTED THAT ALL SORTS OF CALAMITIES WOULD FOLLOW. IN 1954, FOR EXAMPLE, WE EXEMPTED ALL WORKS OF FOREIGN AUTHORSHIP FROM THE MANUFACTURING REQUIREMENT TO MEET THE REQUIREMENTS OF THE UNIVERSAL COPYRIGHT CONVENTION. THE PRINTING UNIONS AND BOOK MANUFACTURERS FOUGHT THIS ON THE GROUND THAT MANY CHEAP FOREIGN WORKS WOULD FLOOD THE U.S. MARKET. THAT FEAR NEVER MATERIALIZED.

THE DEBATE OVER THE CLAUSE GOES ON AND ON. WHEN CONGRESS REVISED THE COPYRIGHT LAW IN 1976, AN EXASPERATED HOUSE JUDICIARY COMMITTEE REPORTED THAT "THERE IS NO JUSTIFICATION ON PRINCIPLE FOR A MANUFACTURING REQUIREMENT IN THE COPYRIGHT STATUTE, AND ALTHOUGH THERE MAY HAVE BEEN SOME ECONOMIC JUSTIFICATION FOR IT AT ONE TIME, THAT JUSTIFICATION NO LONGER EXISTS." I KNOW OF NOTHING THAT HAS HAPPENED IN THE LAST TEN YEARS THAT CONTRADICTS THAT ASSESSMENT. MY ONLY QUARREL WITH IT IS THAT I AM NOT SURE THERE WAS EVER AN ECONOMIC JUSTIFICATION FOR IT IN THE FIRST PLACE.

TODAY THE CLAUSE IS AN EMBARRASSMENT TO THE UNITED STATES AS IT TRIES TO PERSUADE OTHER COUNTRIES TO PROTECT OUR INTELLECTUAL PROPERTY.

FOR YEARS WE HAVE STRUGGLED TO ENCOURAGE OTHER NATIONS TO PROTECT AMERICAN PATENTS, COPYRIGHTS AND TRADEMARKS. MANY HAVE INADEQUATE LAWS OR JUST DON'T ENFORCE THE ONES THEY DO HAVE. SOME IMPOSE INTOLERABLE LICENSING REQUIREMENTS. ADEQUATE PROTECTION IS NOT JUST A MATTER OF FAIRNESS. TO SOME DEGREE, IT IS A MATTER OF SURVIVAL. IN THE COMING YEARS WE WILL DEPEND MORE AND MORE ON AMERICA'S CREATIVE PEOPLE FOR THE NEW PRODUCTS, SERVICES AND

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TECHNOLOGICAL DEVELOPMENTS WE WILL NEED TO COMPETE IN WORLD MARKETS.

AMERICAN INVENTORS, AUTHORS AND ARTISTS, AND THOSE WHO TAKE THE RISKS OF BRINGING NEW PRODUCTS AND SERVICES TO THE MARKET LOOK AT THESE COUNTRIES IN THE SAME WAY BRITISH AUTHORS AND THEIR PUBLISHERS MUST HAVE LOOKED AT US SO LONG AGO. WE EXPRESS SHOCK AND OUTRAGE, JUST AS THEY DID, THAT NATIONS CAN FAIL TO PROTECT FOREIGNERS' INTELLECTUAL PROPERTY RIGHTS. WE TELL THEM TO RESIST THE SPECIAL INTERESTS THAT HAVE PROSPERED FROM THE LACK OF PROTECTION, SUCH AS COPYRIGHT PIRATES AND TRADEMARK COUNTERFEITERS, AND PASS TOUGH LAWS.

THE THEFT OF OUR INTELLECTUAL PROPERTY MAY NOT BE "NICE" BUT THESE COUNTRIES, SOME OF WHICH ARE ONLY RECENTLY EMERGING FROM AN AGRARIAN PAST AND STRIVING TO ACHIEVE RAPID INDUSTRIALIZATION, BELIEVE THAT IT MEANS JOBS FOR THEIR PEOPLE AND REVENUE FOR THEIR TREASURIES. IRONICALLY, WE EXPECT THEM TO STAND UP TO DOMESTIC INTERESTS RESISTING CHANGE WHEN WE ARE UNABLE TO DO THE SAME.

CONTINUATION OF THE CLAUSE COULD JEOPARDIZE OUR NEGOTIATIONS WITH COUNTRIES SUCH AS KOREA, TAIWAN, MALAYSIA, SINGAPORE, THAILAND, AND INDONESIA, ALL OF WHOM WE ARE ENCOURAGING TO MODERNIZE THEIR COPYRIGHT LAWS. SEVERAL OF THESE COUNTRIES HAVE POINTED TO THE CLAUSE, EITHER TO ASSURE THEMSELVES OF AN EXEMPTION FROM IT OR TO USE IT AS A JUSTIFICATION FOR THEIR OWN PROTECTIONIST STATUTES.

THE PROBLEMS DON'T STOP THERE. THE 1982 CONTINUATION OF THE CLAUSE WAS FOUND TO BE A DIRECT VIOLATION OF GATT. ANOTHER CONTINUATION WILL ALMOST CERTAINLY FORCE THE EUROPEAN COMMUNITY TO EXERCISE ITS RIGHT TO RETALIATE.

I HAVE NO SYMPATHY WITH THOSE WHO SAY THAT WE SHOULD NOT HAVE ACCEPTED THE GATT PANEL'S FINDING. I HAVE THREE REASONS FOR SAYING THIS: FIRST, I HAVE RESPECT FOR THE GATT ITSELF AND ITS PROCEDURES. SECOND, THE GATT OPINION MAKES CONSIDERABLE SENSE.

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THIRD, WE NEED THE GATT TO ACHIEVE A NUMBER OF INTELLECTUAL PROPERTY INITIATIVES AND CAN ILL-AFFORD TO IGNORE IT.

THE CLAUSE REPRESENTED A TOUGH ISSUE FOR GATT. THE U.S NEVER CLAIMED THAT THE CLAUSE WAS CONSISTENT WITH THE GENERAL AGREEMENT. BUT, BECAUSE IT WAS ON OUR BOOKS IN 1947 WHEN GATT WAS FOUNDED, IT WAS PROPERLY GRANDFATHERED. IN 1976 THE U.S. CONGRESS VOLUNTARILY ADDED TO THE CLAUSE AN EXPIRATION DATE OF 1982. THE ISSUE WHICH THE GATT EXAMINED WAS THE TECHNICAL QUESTION OF WHETHER THE 1982 EXTENSION OF THE MANUFACTURING CLAUSE AMOUNTED TO "NEW" LEGISLATION WHICH HAD TO BE GATT-CONSISTENT. THIS MAY SOUND LIKE A PROBLEM THAT ONLY LAWYERS COULD LOVE, BUT IT INVOLVES SOME FUNDAMENTAL ISSUES AS TO WHAT THE GATT IS ALL ABOUT.

AS THE GATT PANEL RECOGNIZED, ONE OF THE BASIC AIMS OF GATT IS TO ENCOURAGE "SECURITY AND PREDICTABILITY IN TRADE RELATIONS AMONG CONTRACTING PARTIES." THIS MEANS THAT WHEN A NATION TAKES ACTION IT DOESN'T HAVE TO DO - SUCH AS WHEN IT CHANGES ITS POLICY TO BRING A GRANDFATHERED STATUTE INTO CLOSER CONFORMITY WITH GATT - OTHER NATIONS HAVE THE RIGHT TO RELY ON THOSE ACTIONS. IN OTHER WORDS, COUNTRIES CANNOT SIGNAL THAT THEY WILL FOLLOW ONE POLICY AND THEN FREELY REVERSE COURSE. IN FACT, BOTH THE U.S. AND THE EUROPEAN COMMUNITY BASED THEIR STRATEGIES DURING THE 1979 MULTILATERAL TRADE NEGOTIATIONS ON THE ASSUMPTION THAT THE CLAUSE WOULD EXPIRE IN 1982.

THE FINAL POINT ABOUT GATT IS SIMPLY THIS: ENCOURAGING RESPECT FOR THE GATT PROCESS HAS PARTICULAR RELEVANCE TO INTELLECTUAL PROPERTY. THE ADMINISTRATION WANTS TO INCLUDE INTELLECTUAL PROPERTY ISSUES IN THE NEW ROUND OF TRADE NEGOTIATIONS. WE WERE PLEASED WITH THE PRESIDENT'S SUCCESS IN TOKYO ON THIS SCORE. THERE ARE MANY ISSUES THAT HAVE TO BE DEALT WITH IN A TRADE CONTEXT: ARE PATENT AND COPYRIGHT TERMS LONG ENOUGH? ARE PHARMACEUTICALS, AGRICULTURAL CHEMICALS AND OTHER COMMERCIALLY IMPORTANT GOODS PATENTABLE? IS COMPUTER SOFTWARE GIVEN FULL COPYRIGHT PROTECTION? MUST A PATENT BE LICENSED? ARE SEMICONDUCTOR

CHIPS ADEQUATELY PROTECTED? HOW DO WE SETTLE INTELLECTUAL PROPERTY DISPUTES AMONG NATIONS?

OUR AIM IS TO NEGOTIATE A COMPREHENSIVE AGREEMENT ON INTELLECTUAL PROPERTY RIGHTS UNDER THE GATT THAT WILL RESOLVE THESE AND OTHER PROBLEMS. UNDER THESE CIRCUMSTANCES, WE SHOULD NOT BE IGNORING LEGITIMATE GATT PROCEDURES, PARTICULARLY FOR THE SAKE OF A LARGE, EFFICIENT, HEALTHY, AND COMPETITIVE PRINTING INDUSTRY.

ABOUT 43,000 PEOPLE WORKED IN BOOK PRINTING IN 1984. THIS IS ABOUT ONE-TENTH OF TOTAL PRINTING EMPLOYMENT. OVERALL PRINTING EMPLOYMENT IS GROWING BY ABOUT 13,500 JOBS EACH YEAR. EVEN SO, PRINTERS STILL CLAIM THEY NEED THIS PROTECTION THOUGH THE CLAUSE PROBABLY SHELTERS ONLY A FEW JOBS AT MOST.

AT CONGRESS' REQUEST, THE LABOR DEPARTMENT PERFORMED A STUDY OF THE POTENTIAL EFFECTS ON EMPLOYMENT SHOULD THE CLAUSE BE TERMINATED. THE LABOR DEPARTMENT CONSIDERED SUCH FACTORS AS COST OF MATERIALS HERE AND ELSEWHERE, LABOR COST DIFFERENTIALS, THE IMPORTANCE OF TIMELINESS, AND TRANSPORTATION COSTS, AND CONCLUDED THAT NO MORE THAN 23,500 JOB OPPORTUNITIES WOULD BE LOST. THIS IS A LIBERAL ESTIMATE AND ASSUMES THAT MANY JOB OPPORTUNITIES IN PUBLISHING WOULD BE LOST. THIS IS UNLIKELY. IF MORE CONSERVATIVE ASSUMPTIONS ARE USED, LABOR CONCLUDED THAT THE FIGURE MIGHT BE AS LOW AS 900. I SHOULD ADD THAT LABOR CORRECTLY NOTED THAT WHEN AN INDUSTRY IS HEALTHY AND ABLE TO GENERATE NEW JOBS, A LOST JOB OPPORTUNITY DOES NOT NECESSARILY MEAN A LOST JOB.

OTHER STUDIES SAY MUCH THE SAME. THE INTERNATIONAL TRADE COMMISSION CONCLUDED THAT ONLY ABOUT 1400 TO 6850 JOB OPPORTUNITIES WOULD BE LOST IN THE U.S. PRINTING AND ALLIED INDUSTRIES AND THAT DOMESTIC FIRMS WOULD, IN THE LONG RUN, REGAIN THEIR LOST SALES AS TECHNOLOGICAL ADVANCES DIMINISHED FOREIGN LABOR-COST ADVANTAGES. THE CONGRESSIONAL RESEARCH SERVICE ALSO ISSUED A REPORT DISCOUNTING THE PRINTING INDUSTRY'S ALLEGATIONS OF SEVERE ECONOMIC DISLOCATION.

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THE REASONS ARE NOT ALL THAT COMPLICATED. THERE ARE MANY FACTORS THAT GO INTO A PUBLISHER'S DECISION ON WHETHER TO HAVE THE WORK PRINTED HERE OR ABROAD. LABOR COSTS ARE NO MORE THAN TWENTY PERCENT OF THE TOTAL COST OF PRINTING BOOKS COVERED BY THE CLAUSE, ACCORDING TO THE ITC'S SURVEY OF BOOK PRINTERS. IT IS OVERLY SIMPLISTIC TO ASSUME THAT THE CHEAPNESS OF FOREIGN LABOR WILL ALWAYS GOVERN. TIME IS OFTEN ESSENTIAL. TRANSPORTING THE WORKS BY OCEAN SHIPPING CAN BE EXPENSIVE. PAPER, WHICH IS THE LARGEST ELEMENT OF COST, IS CHEAPER HERE. SUCH FACTORS CAN, AND OFTEN DO, OUTWEIGH THE SMALL FOREIGN LABOR COST DIFFERENTIAL.

IN SHORT, IF MEMBERS OF CONGRESS ARE SINCERELY WORRIED THAT TERMINATION OF THE CLAUSE MAY MEAN LOST JOBS, THEY WOULD DO BETTER TO TRANSFER THEIR CONCERNS TO THE INDUSTRIES TARGETED FOR RETALIATION. AMBASSADOR YEUTTER WILL DESCRIBE THESE INDUSTRIES AND THE COMMUNITIES IN WHICH THEY ARE LOCATED.

IN CONCLUSION, MR. CHAIRMAN, FOR YEARS INTELLECTUAL PROPERTY ISSUES WERE DISMISSED AS HOPELESSLY TECHNICAL AND OF LITTLE INTEREST BEYOND CERTAIN ACADEMIC CIRCLES. TODAY ALMOST EVERYONE UNDERSTANDS WHAT IS AT STAKE AND RECOGNIZES THE IMPORTANT CONNECTION BETWEEN INTELLECTUAL PROPERTY AND INTERNATIONAL TRADE POLICIES. THOSE SENATORS WHO DISSENTED FROM THE JUDICIARY COMMITTEE'S REPORT ON THIS BILL CERTAINLY DO. I CAN'T IMPROVE ON THEIR WORDS:

> "THE MANUFACTURING CLAUSE WALLS AMERICAN AUTHORS INTO ISOLATION, WALLS AMERICAN BUSINESS OUT OF THE INTERNATIONAL TRADING SYSTEM, AND GIVES OFFENSE TO THOSE WHO SHOULD BE OUR ALLIES IN BOTH TRADE AND COPYRIGHT. IT SHOULD BE ALLOWED TO EXPIRE."

THANK YOU, MR. CHAIRMAN. I WILL BE PLEASED TO ANSWER ANY QUESTIONS THE COMMITTEE MAY HAVE.

STATEMENT OF HON. CLAYTON YEUTTER, U.S. TRADE REPRESENTATIVE, WASHINGTON, DC

Ambassador Yeutter. Senator Danforth has chosen his target. [Laughter.]

Mr. Chairman, thank you for inviting us to come here this morning to comment on this bill. It is with a great deal of pleasure that I do so because I find few, if any, redeeming qualities in this legislation; and I hope I can convince you and the other members of the Senate Finance Committee that it deserves very little of your time and attention when you have a lot of other extremely important issues on your agenda.

I would like to comment on it primarily from my viewpoint as the U.S. Trade Representative and the desire on the part of this committee and under your obligations stemming from the Commerce clause to have me do the kind of job on international trade rules that you believe is in the best interests of this country. And in my judgment, this little piece of legislation probably does me more harm than any single specific piece of legislation that you have on your agenda this year. It clearly is very damaging in a whole variety of ways, and I would like to just quickly articulate those for you.

First of all, as you well know, this legislation has been on the books for 95 years, justified initially with an infant industry argument. And that may well have been a persuasive and compelling justification for the legislation back 95 years ago, but I find it thoroughly uncompelling today. It is very difficult to argue that the U.S. printing industry needs infant industry protection after 95 years.

If this were an industry that were in severe financial straits, that would be one thing; but it is not. It is a very productive, efficient industry that is doing well in international trade. It does not need the protection of this legislation. It doesn't need help from the U.S. Government to sustain its international competitiveness. It is a growing, productive, impressive industry indeed.

One of my concerns about the infant industry argument here is that we have been trying to get the lesser developed nations of the world to back away from their own infant industry arguments when they are no longer persuasive, that is, when the time of an infant industry has expired. And what we are finding is that a lot of the LDC's want to keep protectionist actions in place for many years after those actions ought to have been permitted to expire simply because it is advantageous to them to do so.

It is very difficult for me to argue to the LDC's of the world that they ought to terminate their infant industry programs if we are unwilling to terminate ours after 95 years.

I would like to make a comment with respect to the GATT finding in this case because it seems to me, Mr. Chairman, that this is the principal difference in dealing with this issue today versus 4 years ago. At least there was some rationale for extending this clause 4 years ago when there had not theretofore been an explicit GATT finding of its illegality. But that all changed in 1984.

There is a GATT finding that the clause is illegal; and, therefore, there is no rationale whatsoever for continuing it today. There is an explicit right for any affected nation to retaliate now if this clause is extended, and we know very well that nations are going to retaliate. So, we ought to honor our international obligations.

There have been a number of comments here on Capitol Hill that we shouldn't worry about that. Nobody cares whether a nation violates the GATT. I don't happen to think that is a responsible way to approach this or any other issue. I care. The President cares. And I hope that the Senate Finance Committee cares because you are the committee that has primary responsibility on Capitol Hill for international trade issues.

So, it seems to me that we should not blatantly ignore a GATT finding against us, which is what we will do if this clause is extended. The Judiciary Committee report, by the way, skims over that issue very easily by simply arguing that this clause follows the spirit of the GATT because it is a grandfather kind of issue. I find that reasoning completely unpersuasive and it would certainly not be accepted by any of our GATT trading partners.

One of our primary objectives in trade negotiations, as all of you know, is dispute settlement. The great frustration that American business firms have with existing dispute settlement provisions in the GATT; it is just impossible for us to make that argument, too, if we ignore the dispute settlement rulings of the GATT as we purportedly would do if this legislation were passed. So, on infancy industry grounds or dispute settlement grounds, we have a completely indefensible position.

And most importantly of all, we are trying to get the rest of the world to follow a desirable set of practices involving intellectual property. As Secretary Baldrige indicated, we have a whole host of bilateral negotiations, including some section 301 actions, under way around the world with nations who are violating the spirit of the GATT in the way they are handling intellectual property issues.

I just came back from Korea about 10 days ago in which I was negotiating with the Government of Korea on intellectual property. We have people in Asia almost constantly dealing with the Pacific Rim countries on this issue. And of course, as you also know, it is one of our highest priorities for a new GATT round. This kind of legislation just thoroughly pulls the rug out from under us on every one of those efforts, and it is just most unhelpful indeed.

The Government of Singapore, in fact, has indicated that it will not take up membership in the University Copyright Convention if we extend the manufacturing clause. In essence, what they are saying is that they understand our arguments for the necessity to improve intellectual property protection in Singapore; but if we are not willing to clean up our act, they are not willing to clean up theirs. I don't happen to think that is persuasive either, but it is certainly understandable; and we should get our own house in order at the same time that we insist that other people get their houses in order.

We should also recognize that we are not yet signatories to the Berne Convention, which is the international standards making body in this area. We can't qualify; and we are not going to qualify if we extend the manufacturing clause. It seems rather incongruous that the United States is marching around the world trying to get everyone to abide by sound and sensible rules in intellectual property at the very time that we can't even qualify ourselves for membership in the Berne Convention.

All of this is excused in the Senate Judiciary Committee report on the grounds of leverage, the suggestion being that maybe—the explicit suggestion is that the legislation is not very defensible, but it does provide leverage; so let's use it for whatever leverage is there.

I would simply say to the committee that there is no leverage involved in GATT-illegal legislation. None. Zero. Zero. And we ought to recognize that. We get no benefits whatsoever from extending legislation like this.

Finally, the argument is made that there are some jobs involved here. Of course, there are jobs involved in any kind of a trade issue. Certainly one could preserve a certain number of jobs in the printing industry by extending this clause, which is protectionist in its nature; but this is a net job loser because we are assured of retaliation. And if the members of this committee or the Members of Congress want to defend within their respective States or respective districts the job losses that will result, well, I guess that is your privilege to do so.

In my judgment, it is a terrible tradeoff. It is an action that is indefensible in any case because of the GATT illegality of the legislation, but it is an action that will also be a loser in every respect. You are going to be explaining to a lot more industries job losses as a result of retaliation than you will be taking credit for in jobs saved in the printing industry. I don't know how you are going to explain to a tobacco farmer in North Carolina or a soybean farmer in Missouri that you had to do away with his job in order to preserve a printing job in New York City. But that is a decision that each of you will have to make individually.

All in all, Mr. Chairman and Senator Long, Senator Danforth, Senator Baucus, I have to say that this is an unimpressive piece of legislation that ought to be discarded. Some people have suggested, because of our testimony on the House side last week, that we ought to figure out a way to salvage this bill. It seems there ought to be some redeeming quality somewhere; we ought to be able to fix it.

In my judgment, there is no point in fixing legislation that is so fatally flawed in concept.

Senator DANFORTH. Ambassador Yeutter, if you are opposed to a bill, why don't you just come out and say so? [Laughter.]

Ambassador YEUTTER. I am glad you got the message, Senator Danforth.

Senator DANFORTH. Let me begin my comments by saying that I also don't like the Judiciary Committee bill. I think that it is bad legislation. I think particularly the labor standards provision is one that—I don't know what it means. And I think that if this provision is going to be the new standard for American trade policy, that it really is just another way of dressing up protectionism; but let me just raise some questions with you on the concept of reciprocity.

It seems to me that what we do, how we do it, and how we time it should be developed with respect to how we are doing in international trade and what our trade relationship is with other countries now.

First, with respect to Canada, we entered into an agreement with Canada in 1976. The point of that agreement was to wipe out barriers to trade in printed goods. And the United States did that; we maintain an open market with respect to Canada in printed goods. Canada, by contrast, maintains barriers to U.S. printed goods. For example, it is my understanding that there are high tariffs on catalogs printed in the United States.

So, the history of Canada and the United States with respect to printed material is that our market is open and their market is not open. Last Friday, in response to the administration's decision with respect to shakes, the Canadians imposed further restrictions—tariffs—on U.S. printed material. We believe that, with respect to shakes, the United States was operating appropriately under section 201 of the Trade Act. And I think the administration is absolutely right; if laws are on the books, we have to make sure that they work.

I think particularly in light of what happened in the Shoe case, it is important to emphasize that. It seems to me that if Canada is going to overreact, which I think they have done, and if part of the overreaction is to erect barriers to printed material, we should do something other than continue indefinitely to provide open access to the Canadians on printed matter.

Therefore, it seems to me that with respect to Canada, it is reasonable to provide a 2½-year extension of our open market, which is what the Judiciary Committee has done. And during that 2½-year period, we hope to work things out. However, if the Canadians continue to maintain restrictions on U.S. printed goods, we will, on a mirror basis, impose restrictions on their printed goods.

That strikes me as being not a protectionist position, but rather a position which is designed to try in a very measured, slow-moving way to remove something that they have done which we think is wrong.

Second, with respect to the rest of the world, again I would think that there would be something to say about maintaining the principle of reciprocity. That is, to condition the access of our market for printed material on the protection of U.S. copyrights. Now, I know that we have a couple of other ways of doing that. One is by conditioning GSP on copyright projection.

However, I would think that maintaining the manufacturers clause on a conditioned basis would be a far less draconian approach than termination of GSP treatment. I also believe that it would be far less cumbersome than pursuing a 301 case. So, what I am asking is: Far short of what the Judiciary Committee did, wouldn't it be wise on our part instead of just saying, OK, "let her rip," to say, "let her rip if"?

Ambassador YEUTTER. Thank you, Senator Danforth. My judgment on all of that would be about as follows. First of all, I have no disagreement conceptually with your desire to achieve some reciprocity in this area because, obviously, there are lots of violations of intellectual property, principles throughout the world, and we need to attack those with vigor. So, we have no disagreement with respect to the ultimate objectives here.

At the same time, my judgment is that there is no way to get at that objective through an extension of this law or even a modification thereof. I just don't see any way to fix it in a GATT-legal way. It seems to me that we are going to have to look for another avenue to achieve that objective because anything that would trigger the application of this law in its extension would immediately put us in violation of the GATT, even if the other countries are in an indefensible position from the standpoint of trade policy. And we might have a GATT complaint against them, we might have a 301 action or whatever it may be; I think we don't have a right under the GATT to go after them under this legislation.

Senator DANFORTH. Would we want this matter to be brought before the GATT?

Ambassador YEUTTER. The problem there, Senator Danforth, is that they would not have to go to the GATT with it. If this legislation is triggered by anything—reciprocity provisions or anything else, those other countries would have an immediate right to retaliate. They would have no obligation to go back to the GATT. The minute we apply the restriction against them under this legislation or under an extension of this legislation, they could immediately retaliate, and they would.

In other words, we just can't reach them through this legislation because of its GATT illegality. We can reach them through GSP. We can reach them through 301. We can reach the Canadians through the free trade arrangement negotiations. We can reach them through other bilateral processes. But I don't see a way legally to reach them here.

I just think this is a loser because of the GATT finding against this. I don't see any way to repair it to achieve the objective that you have in mind. I wish we could, but I don't see any way to do it.

The CHAIRMAN. Senator Baucus.

Senator BAUCUS. Thank you, Mr. Chairman. Ambassador Yeutter, I want to thank you for what you are doing here. I agree with you. I think the Judiciary bill is a rotten bill. It is bad trade policy; and I agree that there is probably no way to fix it up. In fact, when we go to markup, I am going to offer an amendment to completely repeal the manufacturing clause, and I do so basically for the same reasons that you have outlined.

Namely, if we are going to be effective in enhancing world trade, we are the big boys on the block—we are the biggest and the strongest and wealthiest country in the world. We have got to be leaders. We have to exercise a leadership role that promotes world trade and particularly when new GATT authority is coming up in the next couple of years.

One of the essential issues there is the dispute settlement mechanism; and if we want other countries to abide by an enhanced dispute settlement mechanism, certainly we have to set the precedent of doing so ourselves at the present time when the manufacturing clause has been declared GATT illegal.

It seems that if we want to use the old equity argument, we don't have very clean hands if we go to other countries now, and particularly if we go to a potential new GATT round, and suggest that there should be a stronger, more enhanced dispute settlement mechanism. And I further agree with you that we have no leverage in this case. That is, we do not have leverage on other countries in trying to encourage them to enforce intellectual property rights, when we ourselves under GATT practice an illegal practice. In fact, it is my judgment that other countries are going to retaliate against us if we enforce this.

As I understand it, the EEC has already between $300 and $500 million worth of retaliation in chemicals and tobacco and paper and other products; and I would, too, if I were in their shoes. I mean, if something has been declared GATT illegal—and this has—I would retaliate.

It is also very unfair to the chemical industry in this country and those other industries which have nothing to do directly with the manufacturing clause, but indirectly they suffer the burdens of the manufacturing clause. And I further agree, Mr. Ambassador, that the publishing industry has been long on notice. This is not an infant industry, as you said.

I think this clause first went into effect in 1891, and a lot has happened since 1891. And not only that, I think it is since 1976—correct me if I am wrong—there has been legislation to terminate it. So, the industry has been on notice. Not only is it not an infant industry, it has experienced tremendous technological changes for the better; but second, it has long been on notice.

Two or three times, I think, the Congress has given in and not enforced the termination dates that it had previously enacted. And I think now is the time to finally bite the bullet—to do it—and for all the reasons that you very well expressed and that has come out with your dialog with other Senators here. I strongly feel we should terminate it, and I will be offering an amendment to so provide when we go to markup. I think it is about time.

Ambassador Yeutter. I would just respond to that, Senator Baucus, by saying that it seems to me that the issue before this committee and the Congress is whether the U.S. printing industry is in such dire financial straits that there are compelling reasons for the U.S. Congress to violate our GATT obligations, undercut the U.S. Trade Representative in about a half a dozen ways, and expose another half-dozen industries to retaliation in order to help the printing industry. I don't see anything in this scenario that would justify the Congress going in that direction; but maybe there is something there that I am missing. I don't think so.

Senator Baucus. Thank you very much, Mr. Ambassador. Thank you, Mr. Chairman.

The Chairman. Senator Long.

Senator Long. Mr. Yeutter, I have been told, and I have seen an editorial on the subject, that our situation with Canada has something to do with the fact that this bill is here. The thought is, I guess, that if you pass this bill, it would put the pressure on Canada to make concessions in areas where they presently are acting against American imports. Are you going to take up this situation—this crossfire that is going on at the moment between the United States and Canada—in these talks that are the subject of current free trade negotiations?

Ambassador Yeutter. Certainly, Senator Long, we are concerned about the retaliatory action that the Government of Canada took in response to our shakes and shingles case. I fully concur with

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Senator Danforth's assessment that there was no reason for the Government of Canada to respond as it did. We would not have responded in that manner had it been a similar action by the Government of Canada.

And certainly, we are disturbed because part of that retaliatory action involved increased tariffs on American books. At the same time, Senator Long, the tariffs that were increased by the Government of Canada were on unbound GATT items, including the books. So, the Government of Canada did have a legal right to increase those tariffs. I happen to think they should not have done so. It certainly does not improve the United States-Canadian economic relationships, and it doesn't facilitate trade between the two countries; but Canada did have a legal right to do this.

I would hope that in our comprehensive free trade arrangement negotiations with the Government of Canada we can negotiate those tariffs back down to zero, if that be necessary. Finance Minister Wilson of Canada has indicated that, if this clause is not extended, Canada will very likely move their tariffs back to zero in any case. So, extension of the clause will hurt that cause; not extending it will be helpful, Senator Long.

Senator LONG. Now, my impression, when we were negotiating this free trade arrangement with Canada, was that the administration undertook to assure the American timber industry that you were going to do whatever you could—and you had in mind doing something—to try to keep us from losing our markets for timber products in the United States. You convinced a lot of companies in one industry that they would come nearer to surviving if we authorized negotiation of that so-called free trade arrangement than if they didn't.

Are you optimistic that something can be worked out, that there is a part of this overall trade picture that you could bring to us containing some sort of an arrangement that will help us to hold onto our share of our own market for wood and timber products?

Ambassador YEUTTER. I hope so, Senator Long. Time will tell. I am convinced that, had we turned down the United States-Canada free trade arrangement, lumber talks would have been dead for about the next 10 years. So, I think we have a better chance now by having those talks alive than we would have if the talks had been dead; but obviously, there is a lot of contentiousness in the relationship at the moment, related to the shakes and shingles case, and other trade issues as well. I haven't given up by any means on the lumber case and, in fact, had discussions on that subject with my counterpart, Trade Minister Kelleher, in Seoul, Korea when we were there for a Trade Ministers' meeting about 10 days ago. So, we are still hopeful that something in the way of a sensible solution may ultimately emerge, but only time will tell. As you know, our domestic lumber industry did refile their countervailing duty case, and that case was accepted by Secretary Baldrige and the Commerce Department on Friday.

Now, no one knows what the final result of that case will be, but the timber industry has taken advantage of that prerogative; but we don't consider that to be the solution to the case. We think we need negotiations on other elements of timber as well, and so, we hope that those discussions and negotiations will continue. It is a very sensitive issue on both sides of the border at the moment, as you can see; and the next few weeks will tell the tale.

Senator Long. Thank you.

The Chairman. Senator Grassley.

Senator Grassley. Thank you, Mr. Chairman. I have no questions at this time.

The Chairman. Senator Danforth.

Senator Danforth. No further questions, Mr. Chairman.

Ambassador Yeutter. All right. It is good to be here, Mr. Chairman. Good luck on tax reform.

The Chairman. Now, we have a panel of Mr. Karp, Mr. Henriques, Mr. Wilbourn, Mr. Price, and Mr. Norton.

Mr. Karp, why don't you begin.

[The prepared written statement of Ambassador Yeutter follows:]

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TESTIMONY ON THE MANUFACTURING CLAUSE

Ambassador Clayton Yeutter
United States Trade Representative

Before the Committee on Finance

U.S. Senate

June 10, 1986

Mr. Chairman and members of the Committee, I am pleased to appear before you today to discuss S. 1822, a bill to extend and amend the manufacturing clause of U.S. copyright law. You may be wondering why I, as U.S. Trade Representative, am testifying on an apparently simple copyright matter.

I am here today because the manufacturing clause is almost exclusively a trade issue. Its extension will substantially harm our domestic and international trade and economic interests.

The Administration opposes any form of extension of the clause beyond its current expiration date of June 30, 1986. Let me briefly mention the reasons for our opposition.

- The clause will substantially harm U.S. exporting firms and their workers through the retaliation that we can expect our trade partners to take.

- The clause is not needed by the U.S. printing industry, which is highly competitive in today's world markets.

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- Our goal of strengthening GATT rules and procedures is undercut by the clause.

- The clause seriously impedes our efforts to improve international protection for U.S. copyrights and other forms of intellectual property.

- The clause is an inappropriate and ineffective tool to use in obtaining foreign concessions in trade and intellectual property law.

- The U.S. fight against unfair and discriminatory foreign trade practices is seriously compromised by the clause.

With that brief overview, I would now like set out for you in greater detail the numerous and varied reasons why extension of the manufacturing clause is not in the best interests of the United States.

The Manufacturing Clause: An Overview

In brief, the manufacturing clause prohibits imports, except from Canada, of more than 2000 copies of any copyrighted, nondramatic literary works by an American author or resident. It is a holdover from the 19th century when we wanted to protect our infant printing

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industry. The clause primarily affects books, but also applies to newspapers, periodicals, newsletters and other publications. It does not cover items that are primarily pictorial, such as greeting cards, or where copyright is not claimed, such as manifold business forms.

The clause was originally set by Congress in 1976 to expire in 1982. Despite a Presidential veto, Congress extended the bill to June 30 of this year.

S. 1822 and its companion bill in the House, H.R. 4696, would extend the manufacturing clause permanently. They would also remove the Canadian exemption after January 1, 1989. Effective July 1, 1988, waivers could be issued allowing imports from countries which:

1. the U.S. Trade Representative certifies have no material tariff or nontariff barriers to U.S. printed products, and which adequately protect U.S. intellectual property rights, and,

2. the Secretary of Labor certifies have taken or are taking steps to grant internationally recognized workers rights. This determination may be waived by the President based on the national economic interest.

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When the clause was extended in 1982, the European Communities (EC) asked for a GATT panel review of the clause and its extension. In May 1984, the GATT ruled that the clause is an import restraint inconsistent with the GATT. The ruling gives other countries whose exports are hurt by the clause the right to seek compensation from the United States or to retaliate by restricting their imports from the United States.

The Effects of Retaliation

That right to retaliate will be used by the EC, and possibly other trade partners, if the clause is extended beyond June 30. Millions of dollars of our exports in some of our most competitive sectors are open to foreign retaliation.

The EC has said it will retaliate to the tune of $300-500 million if the clause is extended. The EC is serious about its threat. In March, it asked the GATT for authority to suspend trade concessions to the United States equal to the damage caused to it by the clause. Likely targets include chemicals; paper products; textile, printing and tobacco machinery; and tobacco and tobacco products.

Those industries had shipments totaling $127.7 billion in 1985 and employed over 718,000 workers. Their exports to the EC alone came to almost $4 billion, which would be subject to the uncertainty of possible retaliation (Table 1). Among the states which could be hard hit by EC retaliation are Oregon, Washington, the Carolinas, Kentucky, Virginia, Wisconsin, Tennessee, Ohio, Louisiana, New Jersey, Georgia, Pennsylvania, Massachusetts, Michigan, New York and Alabama. Exporting firms in those states will lose sales and workers their jobs.

Those who claim that today's situation is no different than it was in 1982 are sorely mistaken. When the clause was extended in 1982, there was no GATT finding that the clause is illegal. Without such a ruling, the EC did not have the right under the GATT to retaliate against us, nor did any other country. The 1984 ruling against the United States fundamentally changed the situation.

Nor do the cumbersome waiver provisions in S. 1822 satisfy our GATT obligations. They will not forestall retaliation against U.S. exports. Waivers cannot be granted before July 1, 1988. Few, if any, countries can be certain of certification under the bill's criteria. Indeed, given the provisions of the bill, I have strong doubts that Canada, the EC or Japan could obtain a waiver.

With the 1984 GATT ruling, the EC is understandably unwilling to wait another two years for the possibility of waivers for its member countries. Canada, a major importer of U.S. books and other printed material, has indicated it, too, will retaliate if the United States extends the applicability of the manufacturing clause to it. If it occurred, such retaliation could be above and beyond the recent action taken by Canada in response to our decision on shakes and shingles.

Congress has repeatedly asked the Administration to take measures necessary to open foreign markets to U.S. goods and increase U.S. exports. There is likely to be increased economic growth in Europe this year accompanied by a rising European demand for imports. With the fall in the dollar's exchange rate as compared to major European currencies, our exporters are now poised to take advantage of this situation. We cannot afford to shoot ourselves in the foot with measures such as the manufacturing clause.

The Clause Is Not Needed by the U.S. Printing Industry

In the face of certain retaliation by the EC, extension of the clause is all the more unjustifiable because it would provide no net economic benefit to the United States. The printing industry and its workers do not need the clause to remain healthy, competitive and employed.

The special protection offered by the manufacturing clause was granted at the turn of the century to protect an infant American industry. Today, the U.S. printing industry is among the world's most advanced and efficient. The United States is the world's leading exporter of printed products. In 1984, we exported almost $1.4 billion worth of printed matter, up from just under $1 billion in 1979 (Table 2).

Some are concerned about the threat of low-cost foreign labor. However, the USITC has shown that labor costs make up only 10-15 percent of the total cost of printing and binding books covered under clause. Transportation and communications costs for overseas printers exceed foreign labor cost advantages for most of these books. The United States has technological advantages and benefits from low-cost, high quality paper and other materials.

Much concern has been expressed over the possible employment effects of eliminating the manufacturing clause. The Congressional Research Service, the Department of Labor and the International Trade Commission in various studies have all concluded that there would be no long-term economy wide job losses after the clause expires. Even the Senior Vice President of the Printing Industries of America has publicly acknowledged that "job losses will not be massive."

The most recent study is that performed by the Department of Labor, which reviewed and updated its 1981 study on this issue. Labor examined a range of impacts from low to high. The estimated job opportunity loss in the printing and publishing industry ranged from 900 to 23,300 job opportunities lost. These estimates range from less than one percent to less than two percent of actual 1982 employment levels.

In its 1983 study, the USITC came up with estimated effects on job opportunities similar to those of the Department of Labor. With an assumed two percent loss of U.S. sales, the USITC estimated that the printing and publishing industry would lose 732 job opportunities. With a 10 percent sales loss, the estimated figure rises to just over 3,500.

I want to emphasize that in each case I am talking about job opportunities, not actual jobs! A job is something that exists right now with a worker holding it, while a job opportunity is a possibility, not an actuality. Lost job opportunities do not always translate into lost jobs.

This is especially true for a healthy, vibrant sector of the economy such as the printing industry, which has been a major source of job creation among manufacturing industries. In terms of productions workers, employment in the printing and publishing industry has grown about 12.5 percent since 1979, while in manufacturing as a whole it has dropped over 12 percent (Table 3).

Growth in domestic demand, retirements and voluntary job transfers should all reduce the potential job losses. Indeed, given the projections of continued employment growth in the printing and publishing sector, it may be that no real jobs will be lost in the printing and publishing sector. Total employment in the printing and publishing sector is projected to grow by 2.2 percent a year to 1995, creating on average over 30,000 jobs a year (Table 4).

Diminished Support for U.S. Efforts to Strengthen the GATT

The Administration and Congress agree that we need to strengthen the GATT's ability to enforce its rules governing trade. The only way the United States can ensure that its businesses are receiving fair treatment overseas is through fair and effective international trade rules.

One of the major functions of the GATT is to resolve disputes between its member countries. Some conspicuous failures in recent years have undermined public confidence in the dispute settlement system. The United States seeks to strengthen this system and, thereby, international adherence to GATT rules.

In accordance with already agreed dispute settlement procedures, and despite a vigorous U.S. defense of the manufacturing clause, a GATT panel and the GATT Council have ruled that the clause is inconsistent with the GATT and should be removed. The manufacturing clause had been grandfathered under the GATT. However, the GATT found that Congress fundamentally changed the clause in 1976 when it inserted a termination date for the first time in 85 years. Reasonable expectations were created that U.S. policy had changed and that the United States was moving to bring its law into conformity with the GATT. Once this change was made in 1976, the United States could not turn back and make its laws less conforming with the GATT by then extending the clause in 1982. It was for these reasons that the GATT ruled in 1984 that the 1982 extension of the clause was GATT-illegal.

Ignoring the GATT panel's finding will almost certainly cause other countries to question our commitment to improving the GATT dispute settlement mechanism. If we are to build support for strengthening the dispute settlement process, we must observe that process. We cannot ask that it be applied to others and not apply it to ourselves.

Impact on U.S. Efforts to Strengthen International Intellectual Property Rights Protection

Safeguarding U.S. intellectual property rights is one of the chief goals of the Administration and has been given high priority by Congress. Piracy, misappropriation and infringement of our intellectual property causes severe trade distortions and is an increasingly important trade problem.

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As you know, we want a new multilateral trade round to consider new issues of importance to U.S. trade such as intellectual property. It makes our job of convincing our trading partners to include intellectual property more difficult if we show we are not willing to consider our own existing laws and bring them into conformity with international law.

On a bilateral basis, extending the clause will undercut our attempts to encourage other countries to strengthen their intellectual property laws. We have made progress with Korea, Taiwan and Singapore, but these efforts will be severely undermined should the clause continue beyond June 30.

For example, Singapore has linked its participation in the Universal Copyright Convention to the fate of the clause. U.S. firms could be denied improved protection for their books, records, films and computer software. Extending the clause this year would give other countries the perfect excuse to tell us to clean up our own house before we attempt to make them clean up their houses!

Moreover, the clause materially impedes U.S. access to the Berne Convention. U.S. accession is supported by a wide range of U.S. copyright industries because it would provide stronger and more effective protection for U.S. works abroad. The Berne

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convention restricts the requirements a country can impose for obtaining copyright protection. The convention has been interpreted as forbidding domestic manufacturing requirements such as the manufacturing clause because they violate the formalities restriction. Therefore, extension of the clause would interfere with a possible U.S. attempt to join the convention. At a time when we are pushing for increased respect for intellectual property rights in all forums, we should be moving toward adherence to the convention.

The Clause Is Not a Negotiating Tool to Obtain Foreign Trade Concessions

A reason frequently cited for extending the clause is that the United States should not give up a bargaining chip without receiving some trade concession from our trading partners.

I am sorry to say that the clause gives us _no_ leverage in international negotiations. If the clause were GATT-legal, it might give us some limited leverage.

But the fundamental issue is that the clause has been found GATT-illegal. Countries already have a right to demand compensation from the United States or to retaliate against us for the clause. For negotiating purposes, the clause is a paper tiger without teeth.

Moreover, under Section 301, the President already has the necessary authority to root out unfair foreign trade practices and increase access to foreign markets for U.S. exports. It is an authority which he has and will continue to use vigorously to protect U.S. trading interests.

The Clause Undermines Administration Efforts to Combat Foreign Unfair Trade Practices

Last September, President Reagan announced a series of measures to deal with foreign unfair trade practices. Chief among these was the unprecedented step of self-initiating Section 301 unfair trade cases against several U.S. trading partners. In some cases, we have retaliated when our trading partners have failed to follow the rules of free and fair international trade.

If the manufacturing clause were imposed by a foreign government, it would be precisely the type of barrier which we would attack using our Section 301 authority. It is an unreasonable, unfair restriction on foreign commerce.

U.S. credibility on unfair trade practices, and thus our ability to negotiate from a position of strength, is seriously weakened by the manufacturing clause. Its extension will undermine U.S. efforts to eliminate foreign unfair trade practices which damage

U.S. industries and workers.

Conclusion

In the face of large costs and no benefits, there is no justification for extending the manufacturing clause. It cannot be used as leverage to open foreign markets. It will not win better protection overseas for U.S. intellectual property rights and might well harm our efforts in this area.

Extension of the clause is protectionism pure and simple. It will result is less access abroad for U.S. goods and services and less protection for U.S. intellectual property.

In terms of jobs, all analyses show the impact of the expiration of the clause will have little or no effect on current employment in the printing industry. On the other hand, foreign retaliation is likely to be immediate, costing us hundreds of millions of dollars in exports and the countless jobs related to those exports. In other words, the bill is a loser from every standpoint.

A broad range of private sector groups and companies agree with us that extension of the clause would be detrimental to the United States. Associations such as the Motion Picture Association of America, the Computer and Business Equipment Manufacturers

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Association, the Electronics Industry Association, the Tobacco Association of the U.S., the Authors League of America and the American Association of Importers and Exporters oppose this legislation. Companies against the bill include 3M, IBM, Burroughs, Xerox and Pfizer.

For all the reasons I have discussed, the Administration adamantly opposes any extension of the clause in any form. It is contrary to the national interest and will harm U.S. producers, workers and consumers.

In 1982, Congress specifically wrote a sunset provision into the law. The provision should be honored. If, however, Congress passes a bill extending the manufacturing clause, I will recommend that the President veto it.

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TABLE 1: Possible EC Retaliation Targets - Shipments, Exports and Employment

	Possible EC Retaliation Targets									
	2111 Cigarette Mfg.	0132 Tobacco Farms	Paper 1/	2819 Industrial Inorganic Chem, nec	2824 Organic Fibers, Noncell.	2869 Industrial Organic Chem, nec	3552 Textile Machinery	3554 Paper Industries Machinery	3555 Printing Trades Machinery	Totals of These Industries
1985 Ind. Shipments ($ millions)	14196.0	2555.1	43811.0	14625.0	8287.5 3/	38900.0	1179.0	1171.0	2925.0	127649.6
Exports to EC 1985	332.5	643.8	301.0	952.2	229.0	1283.2	55.3	58.0	143.4	3979.2
Exp to EC/Shipmts	0.023	0.253	0.007	0.064		0.033	0.047	0.050	0.049	
1982 Employment (1000)										
United States	41.5	130.0	227.7	81.7	60.4	111.8	19.4	17.8	28.2	718.5
North Carolina	18.6	63.0 2/	7.4	2.8	11.5		4.7			108.0
South Carolina		10.7 2/	5.9 2/	2.5 2/	15.4		6.4			40.9
Kentucky	2.5 2/	32.9 2/		2.6						38.0
Virginia	2.5 2/	11.3 2/	6.5 2/	3.0	12.3					35.6
Wisconsin			22.3					4.8		27.1
Tennessee			3.8	15.3	4.6 2/	2.5 2/				26.2
Ohio			12.3	6.3		2.9			2.5	24.0
Louisiana			6.6	2.9		14.0				23.5
New Jersey			4.1	3.1		11.4		1.4	2.7	22.7
Georgia		8.2 2/	9.5 2/		4.6 2/					22.3
Pennsylvania			10.5	2.8		2.9		2.1	2.2	20.5
Massachusetts			10.7	2.2				2.0	5.1	20.0

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TABLE 1 (continued)

Possible EC Retaliation Targets (continued)

	2111 Cigarette Mfg.	0132 Tobacco Farms	Paper 1/	2819 Industrial Inorganic Chem, nec	2824 Organic Fibers, Noncell.	2869 Industrial Organic Chem, nec	3552 Textile Machinery	3554 Paper Industries Machinery	3555 Printing Trades Machinery	Totals of These Industries
1982 Employment (1000)										
Michigan			11.2			7.3				18.5
New York			9.3			2.7		1.7	2.5	16.2
Alabama			13.6			2.1				15.7
Maine			12.9							12.9
Texas			5.8 2/	4.3		2.5 2/				12.6
Illinois			4.6 2/	2.8		2.0			2.6	12.0
California			6.2 2/	2.1		2.1			1.5	11.9
Florida			4.7 2/		4.6 2/					9.3
Washington			6.8	2.5 2/						9.3
West Virginia						8.0				8.0
Minnesota			6.2 2/							6.2
Oregon			6.1 2/							6.1
Arkansas			4.9 2/							4.9
Delaware					4.6 2/					4.6
New Hampshire			4.4 2/							4.4
Maryland		3.8 2/								3.8
Missouri						2.6				2.6

1/ Total of Paper Mills (2621), Paperboard Mills (2631), and Paper Coating (2641)
2/ Estimate
3/ 1982 Shipments

TABLE 2: WORLD EXPORTS OF PRINTED MATTER--
TOP TEN COUNTRIES, 1979-1984

(Millions of Dollars)

Country	1979	1980	1981	1982	1983	1984
United States	$ 956.3	$1,097.5	$1,296.8	$1,340.7	$1,324.3	$1,390.8
West Germany	1,260.5	1,448.9	1,294.6	1,261.8	1,264.0	1,241.9
United Kingdom	862.0	1,062.2	1,000.5	940.5	900.4	974.3
France	682.7	755.6	752.5	601.8	613.4	621.3
Italy	527.8	550.7	470.3	451.6	410.0	420.8
Netherlands	364.6	402.1	348.8	364.1	349.7	356.9
Belgium and Luxembourg	342.7	382.7	334.5	317.1	326.5	331.7
Canada	135.8	185.9	190.0	211.4	304.3	320.7
Japan	134.3	203.7	221.5	211.9	238.9	301.0
Spain	386.9	444.2	401.0	413.5	265.5	265.4

Source: United Nations

Table 3: Production Worker Employment, Annual Averages, 1979-85

(in thousands)

SIC	Industry	1979	1980	1981	1982	1983	1984	1985[1]	% Change 1979-85
20-39	Manufacturing	15,068	14,214	14,020	12,742	12,530	13,310	13,214	-12.3
20-23, 26-31	Nondurable goods	5,958	5,772	5,727	5,431	5,413	5,561	5,522	- 7.3
27	Printing and publishing	697.2	690.9	699.3	699.2	711.0	755.9	784.2	12.5
271	Newspapers	167.3	163.5	160.8	158.7	160.0	166.0	171.1	2.3
272	Periodicals	13.9	16.3	18.7	21.0	21.8	24.4	27.5	97.8
2731	Book publishing	26.9	26.9	27.1	27.6	28.3	29.0	31.9	18.6
2732	Book printing	26.7	24.8	24.6	22.0	20.3	21.1	20.7	-22.5
274	Miscellaneous publishing	28.1	26.6	26.4	26.6	30.5	35.2	38.4	36.7
275	Commercial printing	302.5	307.3	306.0	312.1	319.2	342.5	355.2[2]	17.4
276	Manifold business forms	33.3	34.4	34.1	33.3	32.7	33.1	33.3	0.0
277	Greeting card publishing[3]	14.6	15.4	14.8	14.0	12.9	13.3	11.9	-18.5
278	Blankbooks and bookbinding	52.4	50.9	50.9	49.0	52.4	56.0	56.6	8.0
279	Printing trade services	31.6	32.8	33.2	33.3	33.6	35.5	37.7	19.3

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[1] Preliminary.
[2] Estimated.
[3] Unpublished data.

SOURCE: U.S. Bureau of Labor Statistics, Employment and Earnings, various issues.

TABLE 4: EMPLOYMENT GROWTH IN THE PRINTING AND PUBLISHING INDUSTRIES, 1984-1995

Sector	All Employees (thous.) Actual 1984	All Employees (thous.) Projected 1995	Average Annual Growth
Printing and Publishing	1,372	1,751	2.2 percent
Newspaper Printing and Publishing	441	548	2.0 percent
Periodical and Book Printing and Publishing	209	313	3.7 percent
Other Printing and Publishing	723	890	1.9 percent
ALL MANUFACTURING	19,412	21,124	0.8 percent

Source: U.S. Department of Labor, *Termination of the Manufacturing Clause: an Analysis of Potential Employment Effects*, 1986.

STATEMENT OF IRWIN KARP, COUNSEL, THE AUTHORS LEAGUE OF AMERICA, INC., NEW YORK, NY

Mr. **Karp**. Thank you, Mr. Chairman. My name is Irwin Karp. I am counsel to the Authors League of America, which is the national society of professional writers and and dramatists. I appreciate this opportunity to express our views on S. 1822.

The Authors League has opposed the manufacturing clause since the 1950's and continues to urge the Congress to allow it to expire without any compromise or change whatsoever.

Let me just recite briefly our basic reasons for our position. First of all, we believe the manufacturing clause violates the first amendment rights of American authors by imposing a ban on the distribution of an entire class of copyrighted material; namely, literary works manufactured abroad, and only literary works by U.S. authors in English.

As the New York Times pointed out yesterday in an editorial condemning the clause, if John LeCarre's American publisher were to print copies of "The Perfect Spy" in Britain for sale in America, Mr. LeCarre would be protected by his American copyright. But if the American publisher, for example, of David Stockman's latest epic, were to import foreign printed copies of his best-seller, anyone would be free to steal the words. What is the difference? Citizenship.

Copyrights are void for works by Americans but printed abroad. For that reason, the manufacturing clause is actually a measure that is damaging to U.S. authors because U.S. publishers who want to print books abroad can do so in several ways. One of the most significant and obvious is by substituting foreign for U.S. authors.

If they do so, that book—and there will be many of them—can be imported without any limitation under the manufacturing clause, and there are several other methods by which books can be brought in without the ban of the clause and without losing copyrights. The only sufferers will be American authors.

The manufacturing clause is, of course, unjustified. A 1986 Department of Labor Study showed that the inflated job loss predictions of its prior study were without foundation. As the previous witnesses have told you, the extension will provoke retaliation because of the GATT "hit list." I might point out that what the "hit list" does is to borrow the very same immoral principle on which the manufacturing clause is based.

All of the talk about the Canadian catalogs and such missed the point. The manufacturing clause doesn't impose limitations in a traditional trade sense. What it does is say to American authors and their publishers: If you print copyrighted works abroad, you lose your copyright when you bring those works in. You lose protection for publishing rights. And in addition, of course, the manufacturing clause starts out with an absolute ban on importation, which is enforced by Customs which will seize the copies and destroy them. That is not going to prevent Canadian catalogs from coming into the United States or all manner of commercial material, which accounts for the largest part of the category of work subject to the clause because in those areas copyrights are of minor significance.

And if it is cheaper to print copyrighted match covers in Taiwan, they will be printed there and brought in. The only real target of the manufacturing clause is the literary work of the American author: a novel, a biography, a history. Nothing else. And that is no way in which to enforce the restriction that is aimed at preventing unfair trade practices abroad.

As we have pointed out in the past, if the manufacturing clause is such a valuable concept, such a wonderful way to save jobs, the Congress has missed the boat for many years because the job loss in printing is minimal compared to the job loss that has occurred from the exportation of millions of American jobs that once resulted in the production of a whole range of American patented and trademarked products.

And if Congress really thought that the manufacturing clause were the solution to the loss of jobs here, it would have written the manufacturing clause into the Patent and Trademark Acts. The fact that it hasn't, I think, reflects its obvious judgment: that manufacturing clauses are simply not a useful trade weapon. What the manufacturing clause is, is an historical weapon—an anachronism—that has been held onto by the printing industry even though times have changed so significantly in the last several years.

In summary, Mr. Chairman, we think that the manufacturing clause has long outlived whatever usefulness it may have had and that, in view of its constitutional doubt, its provocation of retaliation abroad, its damage to American authors, and its impediment to the U.S. entry into the Berne Convention, that the manufacturing clause should be allowed to die a peaceful death next July 1. Thank you.

The CHAIRMAN. Thank you. Mr. Henriques.

[The prepared written statement of Mr. Karp follows:]

BEFORE THE COMMITTEE ON FINANCE
UNITED STATES SENATE

June 10, 1986

Statement of Irwin Karp, Counsel,
The Authors League of America, on

S. 1822: To Amend and Extend the Manufacturing Clause the Copyright Act

My name is Irwin Karp. I am counsel to The Authors League of America, the national society of professional authors, representing 14,000 writers and dramatists. The League's members who write non-dramatic literary works are the primary targets of the Manufacturing Clause, which will (by its terms) expire on July 1, 1986. The Authors League appreciates this opportunity to present its views on S. 1822, which would revise the Manufacturing Clause and freeze it permanently into the Copyright Act.

The Authors League opposes S. 1822 and urges Congress to reject any extension of the Manufacturing Clause and permit it to expire this summer.

1. Constitutional Objections

The Authors League believes that the Manufacturing Clause of the Copyright Act (Secs. 601 and 603 (a) and (c)) violates the First and Fifth Amendments, and the Patent and Copyright Clause of the Constitution (Art. I, Sec. 8, Cl. 8). A suit to have the Clause declared invalid on these grounds was filed by the League, the Association of American Publishers and me. The U.S. District Court ruled that the clause was constitutional. And a month ago that decision was affirmed by the U.S. Court of Appeals in New York. On May 20th the League, the AAP and I filed a petition for rehearing *in banc*; should the Court deny it, we will file a Petition for Certiorari.

The question of the Clause's constitutionality remains very much alive, and the Congress should consider carefully whether . 1822 will violate American authors and publishers First Amendment rights. In his concurring opinion, Judge Oakes said "*the statute as applied may well in my opinion be unconstitutional* but that he

> "would hold that the statute is not unconstitutional on its face and leave to another day the question whether it is unconstitutional - *a day which with the expiration of the statute, will, hopefully, never come.*" Slip. Op. 3160 [emphasis added]

Proponents of S.1822 who are concerned with protecting First Amendment rights will find scant comfort in the majority opinion by Judge Pratt (joined by Judge Winters). In its landmark decision in *Lovell v. Griffin*, 303 U.S. 444 (1938), the Supreme Court held that the right to distribute books "is as essential to that freedom [of the press] as liberty of publishing." The Manufacturing Clause flatly prohibits the distribution of an entire class of books by U.S. authors, and Judge Pratt conceded that the Court's decision could be read to prohibit government from thus "ban(ning) completely a particular form of distribution." But , he said,

> "the manufacturing clause would not offend this principle and thereby run afoul of the first amendment. This is because, under the regulation, *if the author is willing to forego copyright protection, there is no restriction on free distribution of a foreign-manufactured work.*" Slip.Op. 3155 [emphasis added]

We believe that holding is barred by the First Amendment. In Harper & Row, Publishers v. Nation Enterprises, 105 S. Ct. 2218, 2230, the Supreme Court last year stressed that the draftsmen of the Constitution "intended copyright itself to be the engine of free expression", and cited several prior opinions in explaining that the purpose of copyright was to supply the economic foundation for creating and "disseminating" literary and other works. A ruling which forces authors to abandon copyright in order to distribute their works in a manner that cannot be barred for non-copyrighted works, deprives them of the very economic foundation (copyright) which the Constitution established as the "engine of free expression."

The Hobson's Choice offered to U.S. authors by Judge Pratt also is barred, we believe, by a long line of Supreme Court decisions which hold that Congress cannot condition the granting of a benefit, such as copyright, on the abandonment of a right guaranteed by the First Amendment -- e.g. the right to distribute foreign-made copies of a literary work, which Judge Pratt, in effect, conceded could not be barred for non-copyrighted works.

Judge Pratt, moreover, reached the startling conclusion that Supreme Court free speech decisions "do not, however, create any right to distribute and receive material that bears protection of the Copyright Act." Slip Op. 3155. On this theory the Copyright Act or other statutes could ban distribution of copyrighted books, newspapers, magazines, etc. that contained proscribed political, social or other expression the Supreme Court has held to be protected by the First Amendment; under Judge Pratt's opinion, that price of that protection would be the abandonment of copyright -- which in itself would severely impair or prevent publication by exposing authors and publishers to severe economic loss from infringement.

2. The Manufacturing Clause Is Unfair and Damaging To U.S. Authors

Extension of the Manufacturing Clause, by enacting S. 1822, discriminates against U.S. authors and exposes them to serious injury. U.S. publishers can print a great number of different works abroad without violating the Clause. They can do so by choosing a foreign author, rather than a U.S. author, to write many of the books they decide to publish every year: non-fiction titles, textbooks, children's books, and many other categories. If the additional cost benefit exists, it is not difficult for large U.S. publishers to shift from U.S. to foreign authors to avoid the embargo of the Clause; these firms now issue books by American writers who live and work thousands of miles from their publishing headquarters, and by foreign authors all over the world. The victims of a permanent Manufacturing Clause would be U.S. authors, who will be placed at a severe disadvantage in their competition with foreign authors for the limited number of places on the annual publishing lists of U.S. publishing firms. U.S. authors will suffer. U.S. book manufacturers and their employees will not benefit -- they will not get the work.

3. The Manufacturing Clause Is Unjustified

The Manufacturing Clause imposes an unjustifiable burden on one class of U.S. citizens, authors of nondramatic literary works, to theoretically protect U.S. book manufacturers and their employees from foreign competition.

(a) The July, 1981 Copyright Office report demonstrated that U.S. publishers will not turn to foreign manufacturers to any significant extent, if the Clause is allowed to expire. pp. 132-134.

(b) That conclusion is now affirmed by the current Department of Labor study which negates the enormously exaggerated job-loss predictions of the 1981 Labor Department study.

(c) Other studies cited in the April 24, 1986 Department of Commerce memorandum also make it plain that the expiration of the manufacturing clause will not cause significant, or any, damage to printing-industry employees in the United States, or to the industry.

(d) Extension of the clause will not prevent foreign manufacture of the great preponderance of copyrighted "nondramatic literary works" by U.S. nationals, since these consist of commercial products, advertising, business forms, and other non-book materials, and most of this material relies so little on copyright protection that it would be made abroad if cost differentials warranted, even if that resulted in loss of copyright protection. The 1981 Department of Labor Report produced its inflated job loss estimates largely because it included manufacturing of these non-book materials.

4. Extension of the Manufacturing Clause Will Provoke Retaliation Abroad

As the Copyright Office noted, in its 1981 Report,

> "Alone among developed nations, and virtually alone in the world, the United States, by virtue of the manufacturing clause, controls international commerce in books by controlling the freedom of choice of some of its copyright owners."

> The means chosen by other nations to control (duties, quotas, licenses, exchange restrictions and the like) are costs for entrepreneurs to take into account when they consider where print their works; the manufacturing clause prevents certain U. S. copyright proprietors from even making such considerations." (p. 130)

As you know, the United States violated its obligations under GATT when Congress extended the manufacturing clause in 1982. A similar ruling, and an award of damages, is likely to follow any further extension. More important, the European Community has taken to heart the familiar American adage - "don't get mad, get even." If you pass S. 1822 and extend the manufacturing clause, the EC will retaliate against the U.S. industries on its recently-announced "hit list", banning hundreds of millions of dollars of imports of U.S. paper, tobacco, and machinery and chemicals. A vote for extending the manufacturing clause is not likely to save many domestic printing jobs, but it probably will cost many U.S. workers their jobs due to EC import bans imposed on American industries on the hit list. It should be noted that the ambiguous and clumsy 3-part certification procedure in S. 1822 does not save it from violating GATT or provoking the retaliatory EC embargo; or, in our view, from violating the First Amendment.

5. There Are Other Means of Protection

There are other means of protecting U.S. book manufacturers from unfair foreign competition without violating the constitutional rights of U.S. authors and subjecting them to an unfair and damaging embargo. The July 1981 Copyright Office Report said,

> "The death of the (manufacturing clause) will not leave American [book manufacturing] interests unfairly exposed to foreign competition. The ITC (International Trade Commission) can recommend and the President can impose

> duties, quotas and orderly marketing arrangements if imports harm American interests." (p. 131)

See also the 1982 testimony of Assistant Register of Copyrights Anthony Harrison, before the Ways and Means Committee (5/27/82) Serial 97-56, at pp. 22-23.

6. If Manufacturing Clauses Are a Fair and Effective Weapon Why Stop (or Start) With Books ?

Congress purports to find authority for the Manufacturing Clause in the Patent and Copyright Clause of the Constitution, which authorizes it to grant to "authors and inventors the exclusive rights to their respective writings and discoveries." But in granting exclusive patent rights to inventors, Congress has never imposed a manufacturing clause restriction in the Patent Act: (i) to prohibit the importation or distribution of machinery, equipment and other devices protected by U.S. patents granted to U.S. nationals; or, (ii) as in Sec 601, to give domestic manufacturers who infringe those patents a complete defense based on importation in violation of such a clause.

Yet in the last three decades, vast numbers of U.S. manufacturing jobs have been exported to other countries, whose manufacturers produce and export to this country enormous quantities of products that are protected by such U.S. patents -- and U.S. trademarks owned by U.S. corporations who exported many of those jobs. Nonetheless, Congress has chosen not to write a manufacturing clause into the Patent or Trademark Acts, to prevent the loss of jobs of hundreds of thousands, perhaps millions, of American workers, without violating anyone's First Amendment rights. The estimated job losses in the printing industry, now clearly very low, are microscopic compared to the job losses in industries that used to produce billions of dollars of products protected by U.S. patents or trademarks. The absence of a manufacturing clause in the U.S. Patent Act or Lanham Act would seem to reflect the judgment that manufacturing clauses are not a wise, fair or prudent method of dealing with competition by foreign manufacturers.

7. Extension of the Manufacturing Clause Will Bar U.S. Adherence To The Berne Convention

Faced with world-wide rampant piracy of U.S. copyrighted works, at a cost of hundreds of millions of dollars each year, the realization has grown that the United States should join the Berne Copyright Convention, which includes every other major copyright nation. U.S. membership is imperative because the Berne community is the only effective instrumentality for solving difficult problems that have arisen with new communications technology and the internationalization of every medium of communication. Our entry to Berne is also imperative to assure U.S. authors and producers of adequate protection in many Berne countries which are not in the UCC, and, indeed, against any Berne country which is entitled to retaliate against none-Berne countries. The EC hit list is not the be-all and end-all of retaliation against U.S. failure to give Berne-protection. Berne, itself, permits statutory retaliation in the copyright area. Moreover, our failure to join Berne is already jeapordizing our efforts to persuade nations which are the breeding grounds for large-scale piracy to improve or establish copyright protection for foreign works, an indispensable weapon against this massive pilferage of U.S. property rights. Enactment of S. 1822 will destroy our chances of joining

Berne, at an enormous cost to all concerned, not the least of which are American printers and their employees who now lose considerable work and income because of foreign piracy. It should be emphasized that the Manufacturing Clause does not prevent pirates in any other country from reproducing U.S, copyrighted works and distributing them throughout the world; and that it is another section of our Copyright Act (Sec. 602), and not the manufacturing clause, which prevents importation of those copies into the United States.

The Authors League thanks the Committee for this opportunity to present the views of American authors. We urge that the manufacturing clause be allowed to expire on July 1, 1986 and that S. 1822 be rejected by the Congress.

Irwin Karp
Counsel

STATEMENT OF VICO E. HENRIQUES, PRESIDENT, COMPUTER AND BUSINESS EQUIPMENT MANUFACTURERS ASSOCIATION, WASHINGTON, DC

Mr. **Henriques**. Thank you, Mr. Chairman. My name is Vico Henriques. I am president of the Computer and Business Equipment Manufacturers Association. We are a trade association of producers of information processing business and communications products. Our member companies had combined sales of more than $145 billion in 1985, representing about 3.7 percent of the gross national product.

We employ more than 1.2 million persons in the United States; and in 1985, the industry had a trade surplus of about $4.5 billion.

I am here today to urge you in the strongest possible terms to reject retention of the manufacturing clause. There are two compelling reasons for this recommendation. First, retention of the clause has been declared illegal under the General Agreement on Tariffs and Trade. And second, the manufacturing clause severely undermines the efforts to secure adequate and effective international protection for intellectual property rights.

The manufacturing clause is illegal under the GATT, as you have been told by both Secretary Baldrige and Ambassador Yeutter. Using its existing dispute settlement procedures, the GATT has found the provision illegal under the terms of the agreement, and the United States has accepted this decision.

As a consequence, the European Community has declared that if the clause is not permitted to expire, it will retaliate against a list of products, including tobacco, paper, chemicals and machinery or the tobacco, printing, textiles, and paper industries. Such retaliation doesn't simply mean lost revenue. It means lost jobs in industries that are otherwise healthy and competitive. Such retaliation could be only the start of actions against us by other GATT trading partners.

Additional industries and additional jobs could well be affected. No competitive exporting industry is safe from the prospect of retaliation; but aside from retaliation, there is a broader issue at stake here, and that is the effectiveness of GATT.

The United States has two major objectives for the next round: Improvement of the dispute settlement procedure and reduction or elimination of nontariff barriers to trade. Retention of the manufacturing clause makes a mockery of both of these. It makes no sense to seek dispute settlement reform at the same time we are found to violate GATT rules. And it makes no sense to retain a nontariff barrier that violates the GATT and insist that our trading partners give up theirs.

The second objection to the manufacturing clause is that it seriously undermines our efforts to secure adequate and effective rights for intellectual property. Unfortunately, copyrights have been widely violated by foreign pirate companies that break security codes, copy software and supporting documentation, and sell them for a fraction of the U.S. market prices. Foreign governments have tolerated this by failing to enforce international copyright standards.

Our Government has been supportive in attempting to end this problem, but the problem is widespread and, as Secretary of State Shultz recently said, and as Ambassador Yeutter emphasized this morning, in Singapore the Government has indicated that it intends to link its efforts to improved copyright protection under a new copyright law, and the speed with which it fulfills its plan to join international copyright convention with the exemption of Singapore from the effect of the manufacturing clause.

There are industry-specific problems with the clause that surround the fact that the manuals that come into this country, to help machinery be operated and installed are quite often packed with the product that is manufactured overseas. We are faced with the problem of not being able to keep those manuals on a timely basis.

In conclusion, Mr. Chairman, no amount of amendment will make the manufacturing clause acceptable to our industry. It is protectionist, it stands in the way of expanding trade, and it is illegal under the GATT. Thank you.

The CHAIRMAN. Thank you, sir. Mr. Wilbourn.

[The prepared written statement of Mr. Henriques follows:]

STATEMENT OF
VICO E. HENRIQUES, PRESIDENT
COMPUTER AND BUSINESS EQUIPMENT
MANUFACTURERS ASSOCIATION

My name is Vico Henriques. I am president of the Computer and Business Equipment Manufacturers Association (CBEMA). CBEMA is the trade association of producers of information processing, business and communications products, supplies and services. Its 38 member companies had combined sales of more than $145 billion in 1985, representing 3.7% of our nation's gross national product. They employ more than 1.2 million people in the United States. In 1985, the U.S. computer and business equipment industry had exports of $16.270 billion and imports of $11.825 billion. The trade surplus was $4.445 billion.

I am here today to urge you, in the strongest possible terms, to reject retention of the Manufacturing Clause. There are two primary reasons. First, retention of the Clause has been declared illegal under the General Agreement on Tariffs and Trade (GATT). The European Community has already announced that, if the Clause is retained, it will retaliate; the effect would be serious damage to several U.S. industries in terms jeopardizing both jobs and revenues. Second, the Manufacturing Clause severely undermines efforts to secure adequate and effective international protection for intellectual property rights. Those rights are critical for our industry and for many others. Let me discuss both of those problems in more detail.

The Manufacturing Clause is illegal under the GATT. Using its existing dispute settlement procedures, the GATT has found the provision illegal under the terms of the agreement, and the U.S. has accepted this decision. As a consequence, the European Community has declared that, if the Clause is not permitted to expire as currently scheduled on June 30, it will retaliate against tobacco, paper, chemicals and machinery for making tobacco products, chemicals, textiles and paper. The EC proposes increased tariffs or quotas that would cost U.S. industry between $300 and $500 million.

That retaliation doesn't simply mean lost revenues. It means lost jobs in industries that are otherwise healthy and competitive. We must not risk such a blow to our nation's economy.

The European Community is not the only member of the GATT that is free to retaliate because of the Manufacturing Clause. The retaliation proposed thus far by the European Community could be only the start of a series of actions against us by our trading partners. Additional industries, additional jobs could well be affected. Additional uncertainties are created as retaliatory threats are made and compensations negotiated. No competitive exporting industry is safe from the prospect of retaliation. Thus a vote for the Manufacturing Clause risks danger to other competitive sectors in addition to those I listed before.

There is an even broader issue at stake here, i.e. the effectiveness of the GATT. The U.S. has two important broad objectives going into the next GATT round; improvement of the dispute settlement procedure and reduction or elimination of non-tariff barriers to trade. Retention of the Manufacturing Clause makes a mockery of both these objectives.

Does it make sense to seek dispute settlement reform at the same time as the U.S. has been found to have violated GATT rules under the existing dispute settlement procedures? Does it make sense to retain a publicly acknowledged non-tariff barrier that violates the GATT and then insist that our trading partners give up theirs?

Retention of the Manufacturing Clause severely undermines U.S. needs to strengthen the GATT. It provides our trading partners with a convenient device to undermine and embarrass our negotiators as they seek to ensure the creation of an international marketplace that is open and fair.

Let me move to the second of our objections to the Manufacturing Clause: it seriously undermines our efforts to secure adequate and effective protection for intellectual property rights. To put this problem into perspective, let me review for a moment the importance of intellectual property to the computer and business equipment industry.

Like the products of most other manufacturers, ours are protected to a large degree by patents and trademark laws. But unlike most manufacturing sectors, we have an additional need for effective copyright enforcement to protect software and instructional manuals. Unfortunately, copyright has been widely violated by foreign pirate companies that break security codes, copy software and supporting documentation and sell them for a fraction of the U.S. market price. All too often, foreign governments have tolerated this international piracy by failing to enforce international copyright standards or by failing to have copyright protection at all.

Our government has been very supportive of our industry in attempting to negotiate an end to this problem. Intellectual property is on the U.S. agenda for the next GATT Round. The Administration is conducting bilateral negotiations in the area, which we strongly support.

I personally went on an intellectual property protection negotiating tour to the Far East the Register of Copyrights and with representatives from the Departments of State and Commerce and the USTR. That trip is now bearing fruit. Singapore has taken steps toward improving its copyright law. But, as Secretary of State George Schultz recently explained to Congressional leaders, "The Government of Singapore has indicated that it intends to link its efforts to improve copyright protection under a new copyright law--and the speed with which it fulfills its plan to join an international copyright convention--with the exemption of Singapore from the effect of the manufacturing clause."

By persisting with this Clause, we are handing our trading partners a weapon to be used against us. We provide them leverage with which they can slow down the process of providing adequate and effective intellectual property protection. And the problem extends far beyond Singapore--to Taiwan, to Brazil, to our negotiations with Korea in the ongoing 301 intellectual property negotiation.

An additional problem lies in the fact that we have not dealt our negotiators as strong a hand as we could to assist them in the difficult task of promoting adherence to international intellectual property rights, conventions and treaties. The reason is that we do not adhere to the Berne Copyright Convention.

We testified last month on the need for the U.S. to adhere to Berne. I will not repeat those arguments here. Suffice it to say that Berne Convention provides a higher level of protection for copyright holders than the Universal Copyright Convention. Unfortunately, the Manufacturing Clause stands as an impediment to Berne adherence. It is ironic that a provision of our own copyright laws damages the opportunity for U.S. citizens and U.S. companies to receive greater international copyright protection.

Thus far I have opposed the Manufacturing Clause because of the principles involved and because of the negative effect it will have on the U.S. economy. But before I end, I do want to mention an industry-specific problem with the Clause.

Our industry designs many products that are manufactured overseas. We ship products directly to customers from those overseas locations. Customer satisfaction dictates that instructions on installing and operating those products arrive with the product. Unfortunately, the Manufacturing Clause stands in the way of meeting that customer demand.

The reason is simple. Most of the instructions are in fact originated in the United States. But we need to have the manuals printed at the point of manufacture because products change during the manufacturing process. A switch is moved from the right to the left side. A plug suddenly needs an adapter. Thus the manufacturing operation must have the flexibility to change the manual; otherwise customers will encounter difficulties in installing or operating the equipment.

The Manufacturing Clause presents us with several undesirable options in filling this need to have the product and the manual produced at the same place:

o Our first option is to print the manuals in the United States and ship them to the overseas location. If we print the manuals in advance, they almost invariably contain errors. Alternatively, we could wait for the printing until the product is actually manufactured, causing shipping delays of weeks or even months, while we print the manuals in the U.S. and ship them abroad. I'm sure you can understand that the time-critical nature of our industry means that we would lose both of sales and credibility if we undertook this procedure.

- A second possibility is that we could engage a foreign author to rewrite the manual. This would mean that we could print abroad and ship the manual into the U.S. with the product, since the Manufacturing Clause applies only to U.S.-authored works. Again, I think you can see how contrary to reasonable business practices this would be. Paying the authors to reconceive the manuals would be money down the drain. Errors would undoubtedly creep in, inconveniencing customers and forcing us to undertake additional servicing costs. Clearly this is not a solution.

- The third option is the one now being adopted by several of our companies--abandoning copyright. Unfortunately, this damages companies in the long run, since many parts of these manuals have intrinsic value. In addition, it impedes the discovery of pirated products, since pirated manuals are often part of the overall evidence used against those who have illegally copied our software or hardware.

I sincerely doubt that the U.S. Congress wants to punish an industry that is creating a major trade surplus by forcing us into the convoluted and damaging printing procedures demanded by the Manufacturing Clause. Amendments to the bill could alleviate the industry-specific problem, which we would like to discuss with your staff.

But no amount of amendment will make the Manufacturing Clause, in itself, acceptable to our industry. It is protectionist and stands in the way of our expanding trade. It is illegal under the GATT. It counters our efforts and the efforts of the Administration to gain effective international intellectual property protection for our products.

It is time to rid ourselves of the anachronism of the Manufacturing Clause and move forward into an approach to international trade that benefits the entire nation.

STATEMENT OF RICHARD WILBOURN, POLICY ANALYST, CITIZENS FOR A SOUND ECONOMY, WASHINGTON, DC

Mr. WILBOURN. Mr. Chairman and members of the Finance Committee, thank you for this opportunity to testify before you today. I speak on behalf of the 250,000 members of Citizens for a Sound Economy, a citizens group dedicated to increasing consumer choice and opportunity by promoting policies of limited Government and economic freedom.

Other witnesses have already expanded on the GATT illegality of the manufacturing clause, the adverse effect it has on America's printing industry competitiveness, and the expected retaliation introduced by all forms of legislation aimed at extending the manufacturing clause. However, as a consumer representative, I want to emphasize the unwarranted burden of forcing consumers to pay higher prices for printed materials. According to the Institute for International Economics, the manufacturing clause cost American consumers $500 million more per year for printed products.

The Institute, which is a nonpartisan educational research organization, estimates that this translates into a 12 percent higher consumer price averaged over all printed materials, even including those not directly affected by the manufacturing clause. The important and undeniable conclusion here is that the American consumers pay a great deal more for the printed products they buy.

Much of the debate surrounding the extension of the manufacturing clause relates to the question of jobs saved in the printing industry. Several estimates of jobs saved by the manufacturing clause have been presented by both sides.

The estimate of 5,000 jobs saved given by the Institute for International Economics is consistent with other estimates of short-run jobs saved by the manufacturing clause. If this estimate is accurate, then the manufacturing clause saves jobs at an unacceptable consumer cost of $100,000 per job. Moreover, the jobs that are preserved by the manufacturing clause are generally the lowest paying in the printing industry. But really, these arguments reveal only half the story.

Actually, it is all together misleading to speak of jobs being lost in the American printing industry. The printing industry is a growth industry with annual employment growth exceeding the number of jobs that may be displaced by the expiration of the manufacturing clause. In short, the printing industry will continue to experience employment growth regardless of the manufacturing clause's presence.

The manufacturing clause is an outdated piece of protectionist legislation which benefits a small group of vested interests at a significant cost to American consumers and the long-term competitiveness of the printing industry.

The manufacturing clause is not only an unfair trading practice in the eyes of the GATT and our trading partners; it is unfair to the American reading and consuming public which must bear the burden of higher prices for printed materials. Citizens for a Sound Economy urges the members of the committee to heed these arguments for expiration of the manufacturing clause and join us in our effort to promote low consumer prices and a competitive American economy. Thank you.

The CHAIRMAN. Thank you. Mr. Pri

[The prepared written statement of Mr. Wilbourn follows:]

C/S/E

TESTIMONY ON
INTELLECTUAL PROPERTY RIGHTS AND THE MANUFACTURING CLAUSE

BY

RICHARD E. WILBOURN

CITIZENS FOR A SOUND ECONOMY

FOR THE

COMMITTEE ON FINANCE

OF THE

U.S. SENATE

JUNE 10, 1986

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Citizens for a Sound Economy thanks Chairman Packwood and the members of the Finance Committee for this opportunity to testify on the manufacturing clause as it relates to intellectual property rights.

Citizens for a Sound Economy (CSE) is a 250,000 member citizens group dedicated to expanding consumer choice and opportunity. With this goal in mind, CSE opposes extension of the manufacturing clause of the U.S. copyright laws.

On June 30, the manufacturing clause of the copyright laws will expire. The manufacturing clause harms consumers, is protectionist, violates the General Agreement on Tariffs and Trade (GATT), and may very well reduce employment in the printing industry it is designed to protect.

The manufacturing clause requires resident American authors of non-dramatic literary material to print their works in Canada or the United States in order to retain copyright. Its practical effect is that most non-dramatic books, periodicals, newspapers, directories, instruction materials, manuals, and other commercial printings sold in the U.S. must be printed domestically.

From the consumer's standpoint, the manufacturing clause functions much like a tariff and creates economic inefficiency. It limits choice and raises book prices by an average of 12 percent according to the Institute for International Economics, costing U.S. consumers $500 million more per year for printed materials. It also distorts consumption and investment, resulting in a $29 million annual efficiency loss to the economy.

Not only does the reading public bear the burden of the manufacturing clause through higher prices, but American authors suffer since their works must compete against foreign authors whose works may be printed at the most cost-efficient locations around the world. In particular, new authors and illustrators are hurt because publishing untested works is made more risky. Many new works may never be published if the manufacturing clause is extended.

Consumers and authors find the manufacturing clause offensive, as do our allies and trading partners within the GATT. The United States has already been held in violation of the GATT because of the manufacturing clause. Its extension will severely undercut congressional attempts to eliminate unfair trade practices abroad and will be viewed as wholly inconsistent with this country's claims to leadership in the world copyright community.

Furthermore, the Department of State's Ad Hoc Working Group on U.S. Adherence to the Berne Convention has determined that the manufacturing clause is incompatible with U.S. efforts to abide by this international agreement. The strength of the Berne Convention agreement, which is the world's strictest international agreement protecting copyright property rights, depends on the good faith and cooperation of those nations claiming to subscribe to its principles. Consequently, U.S. non-cooperation with this agreement denies authors the higher level of copyright protection afforded by the Berne Convention and results in significantly less secure U.S. intellectual property rights for printed materials.

Yet despite these serious deficiencies in the manufacturing clause, Congressman Barney Frank and Senator Strom Thurmond are promoting the unlimited extension of the clause in two identical pending bills, HR 4696 and S 1822. While these bills are a compromise between printing, labor, and publishing interests, this compromise does little to remove the protectionist inefficiencies of the manufacturing clause. The compromise extends the current manufacturing clause for two years and then establishes a tricky certification procedure based on a nation's intellectual property protection and labor rights records. Even without the two year extension included in the compromise, the policy of exempting certain countries from a provision that is GATT-illegal is a dangerous course to follow.

The justification most often given for these bills is that they supposedly save American jobs. However there is evidence which indicates a net job increase if the manufacturing clause is allowed to expire. For example, the Canadian exemption added to the Manufacturing Clause in 1978 resulted in no job losses within the American printing industry despite an absence of language or transportation barriers. Instead, Canada agreed to lower all its duties on imported materials of a scientific or educational nature from 10 percent to zero. American printers were able to increase their share of the Canadian print market while maintaining their percentage of the domestic market.

On the other hand, a dramatic negative effect on American employment outside the printing industry would result if the likely prospect of retaliation by the European Economic Community (EEC) becomes reality. The EEC has formally announced before the GATT that the manufacturing clause is costing it between $300 and $500 million in revenue opportunities, and it will retaliate if the clause is extended. The Thatcher government of Great Britain, which has officially sent members of Parliament to the United States to lobby U.S. congressmen against the manufacturing clause, has publicly announced its opposition to the clause in the House of Commons. Its estimates of damages caused by the manufacturing clause are much higher than those of the EEC. Great Britain has promised that it will encourage the European Community to retaliate against U.S. paper and tobacco products if the clause is not allowed to expire.

Furthermore, Canada retains the right to reenact the 10 percent print tariff it removed in the 1970's, and is likely to do so. Any of these retaliatory actions would upset employment in the printing, paper, and tobacco industries. Other retaliation and counterretaliation could affect U.S. agriculture, electronics, and consumer goods industries.

The copyrights of American authors and publishers should not be held hostage to protectionist trade politics. Our reading and consuming public, authors, publishers, manufacturers, and workers should not be forced to pay an unnecessary price to protect the special interests of a few. The manufacturing clause is a roadblock to gaining greater access to foreign markets. Its expiration will increase opportunities for American authors and illustrators and grant consumers a wider variety of less expensive printed products.

STATEMENT OF ARTHUR C. PRINE, JR., VICE PRESIDENT, CORPORATE RELATIONS, R.R. DONNELLEY & SONS CO., CHICAGO, IL, ON BEHALF OF THE PRINTING INDUSTRIES OF AMERICA, THE BOOK MANUFACTURERS INSTITUTE, AND THE NATIONAL ASSOCIATION OF PRINTERS AND LITHOGRAPHERS; ACCOMPANIED BY AMBASSADOR DAVID R. MacDONALD, ESQ., BAKER AND MacKENZIE, WASHINGTON, DC

Mr. **Prine**. Mr. Chairman, before I begin, let me introduce Dave Macdonald, who is a former U.S. Deputy Trade Ambassador from 1981 to 1983 and who I think will be quite helpful in dealing with questions in regard to GATT.

The issue we are dealing with today, like so many others we see, depends on our answers to one or two core questions. In my view, much of what we are hearing in this debate is irrelevant and peripheral at best. First, the charge that S. 1822 is protectionist just is not so. All this talk of dire straits and distressed industry has nothing to do with the case we are presenting. S. 1822 provides for a phasing out of the clause, as we gain roughly equivalent access; and so, it is really an instrument to promote free trade.

Second, the argument that extending the manufacturing clause violates GATT is without real significance. If it is a technical violation, EC retaliation would have to be keyed to damage; and there is little if any damage if EC countries are soon granted the exemption as we expect.

Third, the charge that S. 1822 compromises our ability to qualify for the Berne Convention is also a scarecrow. The Register of Copyrights has testified that he sees this bill as presenting no real problems for U.S. accession to the Berne Convention, and we are willing to rest with his opinion.

With these three scarecrows torn down, let's deal with the core issue; and that core issue is this: What is the best way to achieve free trade in printing? Shall we continue on a course of unilateral trade disarmament as we have for the last 10 years, hoping that after we provide total access to our markets, foreign nations can be trusted to reciprocate? Or shall we use the manufacturing clause as a bargaining chip, phasing it out as other countries provide us with roughly equivalent trading access?

The history of the last 10 years proves conclusively that we cannot rely on unilateral trade disarmament and blind faith in our trading partners. Ten years ago, we granted Canada a full exception, and we sharply reduced manufacturing clause coverage in the rest of the world. There was joy in Canada and an early Christmas in the Pacific Basin and other world printing capitals. Today, 10 years later, as we try to sell abroad, we in the printing industry are faced with a staggering array of trade barriers, the worst of which are in Canada and the Pacific Basin.

Picture a magazine printed and published in the United States arriving at the Canadian border. If it contains more than 5 percent advertising aimed at Canadian audiences, it will not be admitted to Canada. Once it is admitted to Canada, if it is, it is subjected to mail rates that are five and six times as much as mail rates applied to Canadian publications; and if a Canadian advertiser dares to advertise in a United States publication, he is not able to deduct the cost of that advertising as an expense under the tax codes of Canada.

Also, recognize that as we printers in the United States are trying to sell into Canada, we are facing a 25.6-percent tariff on advertising and other printed matter and a 30.5-percent tariff on catalogs. We think those are——

The CHAIRMAN. I will have to ask you to conclude, Mr. Prine.

Mr. PRINE. All right, sir. I will simply conclude by saying this: This position of unilateral trade disarmament has not worked. We do not think our industry should be asked to depend on unilateral trade disarmament and blind faith and the good will of trading partners who have failed us.

The CHAIRMAN. Thank you, sir. Mr. Norton.

[The prepared written statement of Mr. Prine follows:]

STATEMENT OF ARTHUR C PRINE, JR.
VICE PRESIDENT-CORPORATE RELATIONS
R. R. DONNELLEY & SONS COMPANY
CHICAGO, ILLINOIS

I am Arthur C Prine, Jr., Vice President of R. R. Donnelley & Sons Company, which has its headquarters in Chicago, Illinois. My company is the largest printer in the United States, with some 20 plants in 14 locations across the country. We also are the third largest printer in England. I am testifying today on behalf of the Book Manufacturers' Institute, PIA, and NAPL.

We are here today to support S. 1822. At the threshold we should recognize three fundamental points —

- S. 1822 is a substantial change from and liberalization of what used to be known as the "Manufacturing Clause." This new Bill is designed to promote effective free trade on an equitable and reciprocal basis. Any other approach to dismantling the old Manufacturing Clause carries extremely serious implications for the Printing Industry, our nation's sixth largest industry in terms of jobs.
- In attempting to sell U.S. printed products into other countries we are faced with a vast array of tariff and non-tariff barriers, as well as by wholesale intellectual piracy that undermines U. S. production.
- Over the years, and particularly in the last 10 years, Manufacturing Clause coverage has been whittled down while foreign governments have done virtually nothing to move toward free trade in printing. Simply stated, in printing we in the United States have been engaged in unilateral trade disarmament.

Dealing with each of these three fundamental points —

I. IMPLICATIONS OF TERMINATING THE CLAUSE

A. Industry Based on Clause — Over many years a large and important industry has developed in reliance on the continued existence of the Manufacturing Clause. The Manufacturing Clause has been a part of U.S. law for more than 95 years. Since it was introduced in 1891, thousands of companies have come into existence, so that today our industry is the nation's largest in number of establishments; billions of dollars have been invested; and hundreds of thousands of jobs have been created, so that today our industry is the nation's sixth largest in terms of jobs.

Although the provisions of the Clause have been progressively narrowed over the years so that it is not nearly as extensive as it was, it remains a cornerstone of our industry.

When first introduced in 1891, the Manufacturing Clause provided that for all practical purposes no one was entitled to U.S. copyright protection unless the printed product was manufactured in this country. Simply stated domestic manufacture was established as a condition for granting copyright monopoly in practically all of what was then copyrightable.

In general, the history of the Clause coverage in the past 95 years has been one of continuing erosion, to a small extent by the Copyright Act of 1905, and further by adoption of the U.C.C. and ad interim copyright provisions in 1954, but drastically and dramatically by the 1976 law, all as shown on Table I.

TABLE I -- Manufacturing Clause coverage comparison: 1891 versus today

1891	Today
Virtually all copyrightable materials	Preponderantly nondramatic literary copyrightable materials.
All languages	English language only.
All authors	U.S. authors domiciled in United States only
Whole printing process (typesetting, all preliminary steps, platemaking, printing, and binding) in United States.	All typesetting and other preliminary steps to platemaking for lithographic printing may be done abroad.
Printed in United States only	May also be printed in Canada.

As can be seen from the Table, the Manufacturing Clause is far from what it once was. It is still, however, extremely important to the companies, the investors, and the working people whose jobs are keyed to the health and vitality of our industry.

S. 1822 provides for a final phasing out of the Manufacturing Clause as other countries phase out their printing trade barriers. In this way S. 1822 may properly be characterized as an instrument to promote free trade.

B. Printing Industry Is Unusually Vulnerable to Wage Rate Differentials -- Printing is a highly labor intensive industry. Even though the U.S. printing industry is a leader in automation, much of printing is labor intensive. Precise figures are not available, but we think we may well be the most highly labor intensive of any major manufacturing industry in the United States. This means the wage differentials between us and low wage rate countries, such as Hong Kong and Singapore, are much more destructive to printing than to most other manufacturing industries.

It has been suggested by some that the United States should move out of labor intensive manufacturing industries, like printing, and concentrate on high technology industries where high American wage rates can be supported. This may be very nice economic theory, but it does not make very nice listening for manufacturers and for workers and their families in the labor intensive industries who are to be sacrificed in the name of long-range economic theory.

C. Job Loss -- If the Manufacturing Clause simply expired while all other countries continued in their present mode, we believe that many thousands of jobs will be lost to foreign competitors who benefit from various kinds of government support and low wage rates in a labor intensive industry.

Exactly how many jobs would be lost? There have been two studies prepared by the Department of Labor. One lays out four scenarios and concludes with figures ranging from 900 to 23,300 jobs; the other concludes that total job loss, reaching into supplier industries as well as into printing itself, might well reach as high as 367,000. The International Trading Commission estimates 1,400 to 6,850.

In my opinion the reliability of these studies and estimates is seriously undermined, not only by the bias of the conducting agencies, but also by a misunderstanding caused by the absence of long run production facilities in other parts of the World. It does little good to analyze foreign printing cost and pricing levels today when we know that production facilities would change dramatically if the Manufacturing Clause died. If the Manufacturing Clause expires, we would expect Japanese and other printers to establish new state-of-the-art facilities in the Pacific Basin. Accordingly, we think it clear that current price and cost analyses are not an accurate forecast for the future. Suffice it to say, that we who sell printing for our daily bread are deeply concerned. Our presence here today reflects that concern. We are convinced that many thousands of jobs would be lost.

D. Impact on Small Business -- Even though printing is one of our nation's largest industries, most of the companies are small. If the Manufacturing Clause expires, we believe the economic impact of this lost business would fall most heavily on small business. We at R. R. Donnelley are doing everything we can to maintain the vitality of the U.S. Printing Industry; we are doing everything we can to keep these jobs in the United States. But if the Manufacturing Clause expires, if you force us to export our business, if you force us to send jobs overseas, we are prepared to do so. We are large; we are well-staffed; we have the necessary manufacturing and technical resources; and we are well-financed.

But most companies in the printing industry cannot. It is on this multitude of small businesses that the blow would fall most heavily. Many small businesses will neither be able to compete with Far East plants, nor have the resources to move there. They, and their employee will bear the consequences in harshest terms.

II. U. S. PRINTERS TRYING TO SELL IN OTHER COUNTRIES ARE FACED WITH A VAST
OF TRADE BARRIERS

A. With the U. S. a signatory to the Florence Agreement (obligating u to place tariffs on educational and cultural materials), the Manufacturing Clause is the only trade protection the printing in has.

On the other hand, as we try to sell printing in other countri faced with monstrous trade barriers.

1. E.C. tariffs on catalogs
2. A wide range of non-tariff barriers, probably more than we know.
3. Wholesale piracy in the Pacific Basin
4. In Canada a 30.5% tariff on catalogs, and a 25.9% tariff on advertising materials and printed matter
5. Also in Canada discriminatory mail rates, advertising content restrictions, and special tax code restrictions, all designed to prohibit or discourage sale of U.S. magazines in Canada.

III. UNILATERAL TRADE DISARMAMENT

Looking back over the last ten years I cannot think of one case in which our government has succeeded in eliminating, or significantly reducing even one foreign printing trade barrier. From the standpoint of our industry at least, it appears that virtually all of our government's efforts have been aimed at eliminating what's left of the Manufacturing Clause. One must wonder how much more the cause of free trade would have been served if our own government had pursued with equal vigor the task of encouraging foreign governments to pull down their many barriers.

We believe that one reason why our own government has been so ineffective in dealing with foreign trade barriers is that for the last nine years the Manufacturing Clause has been scheduled to terminate -- first in mid-1982 and now in mid-1986. With the Manufacturing Clause scheduled to end automatically, foreign countries have had little or no incentive to bring down their own trade barriers. The attitude of these other countries appears to be, "Good! The last remaining U.S. printing trade barrier is going to expire automatically. Let's leave all of our trade barriers intact. Let's do nothing about shutting down the wholesale intellectual piracy that undermines U.S. production of copyrighted materials. Let's get ready to pick up the spoils."

In the case of Canada the record is particularly bad. As explained in Attachment "A" (CANADA AND THE TORONTO AGREEMENT), printing unions, manufacturers, and publishers on both sides of the border entered into a written agreement, signed in Toronto in 1968, to eliminate printing trade barriers. We in the United States honored our commitment by sponsoring and obtaining a Manufacturing Clause exemption for Canada. As can be seen from the list of Canadian trade barriers cited above, the Canadian record is not nearly so satisfactory.

When the Congress granted the Canadian Manufacturing Clause exemption in 1976, the final Conference Committee Report stated that the Canadian exemption was included with the expectation that Canada would move promptly"... to remove high Canadian tariffs on printed matter and ... other Canadian restraints on the printing and publishing trade between the two countries ... The Canadian exemption is included in Section 601 with the expectation that these changes will be made. If for any reason Canadian trade groups and the Canadian Government do not move promptly in reciprocation with U.S. trade groups and the United States Government to remove such tariff and other trade barriers, we would expect Congress to remove the Canadian exemption." We think the time has come for the Congress to act in conformance with its 1976 Conference Committee Report.

THE DILEMMA

And so we are faced with a dilemma. Over the years, piece by piece, we have reduced the coverage of Manufacturing Clause. In the last ten years alone, we have granted a complete exception to Canada; we have carved out a special exemption for lithographic typesetting and preliminary work so that this work could be done abroad; and we have further narrowed the coverage of the clause so that today it applies only to "preponderantly, non-dramatic literary material." (This last change among other things has permitted publishers to move a wide variety of picture books overseas.)

All of these reductions in the last ten years have been made in the name of free trade ... in the hope that foreign countries would reciprocate by reducing or eliminating their own printing trade barriers. Shall we continue on this reckless course of unilateral disarmament? Shall we ignore the lessons of the last ten years? Shall we give up what little we have left in the blind, naive hope that our foreign trading partners will see the light? Shall we stand by and watch U.S. jobs go overseas while foreign competitors gleefully pick up the spoils?

And will they pick up the spoils? We need look no further than Canada for an answer. Canada has enjoyed a full exemption to the Manufacturing Clause for a little over nine years. During the last ten years Canadian book shipments into the U.S. have increased by 537% while our shipments into Canada have increased by only 37%. Canadian catalog shipments to the U.S. have increased by more than ten times in the last ten years and are today six times greater than our shipments to Canada. Is it any wonder our overall U.S. trading deficit with Canada is second only to Japan?

If Canada can do that with relatively high wage rates, think what will happen if Japanese know-how is merged with Pacific Basin wage rates.

S. 1822 - THE SOLUTION

Even though the Manufacturing Clause is shot through with holes, it remains the only weapon in our trade arsenal. Clearly, it should not be surrendered without our receiving something in return. Accordingly, we support S. 1822. Retain the Manufacturing Clause, but provide exceptions on a country by country basis. In this way the Manufacturing Clause becomes an instrument of free trade. Focusing on S. 1822 a little more specifically we see -

- S. 1822 - extends the Manufacturing Clause for two years. In this period those countries truly interested in free trade for printing and publishing products can put their houses in order and file for exemptions effective July 1, 1988. Thus, in a relatively short period of time the United States and our friendly trading partners can move to a free trade position.

- Although it is difficult to identify all of the non-tariff barriers in the world today, we would expect that the E.C. countries would have little if any difficulty qualifying.

- The Canadian exemption would be extended for 2½ years at which point it would end unless Canada moves to a free trade position. This approach is consistant with declared congressional intent when the Canadian exemption was granted by Congress in 1976.

We recognize one weakness in S. 1822, namely, it does not cover tariff barriers. This omission is intentional and has been made in deference to the S.T.R., since we assume that tariff reduction negotiations should be carried out under the GATT. We say this despite the fact that the highest printing tariffs imposed by the U.S. will be only 1.8% at the end of the Tokyo Round reductions, while Canada, as an example, now assesses a 30.5% tariff on catalogs and a 25.9% tariff on advertising materials and printed matter, which is up about 40 to 50% from the start of the Tokyo Round. This increase by Canada was made without objection from our own government.

CONCLUSION

We are not an industry trying to hide behind protectionist legislation. We have been cooperating in the piecemeal removal of U.S. printing trade barriers. And now we are prepared to support the removal of the last piece of protection ... provided we can get some kind of roughly equal access to foreign markets. We are prepared to meet the foreign challenge. But we want equal access.

Santayana told us that those who do not study the lessons of history are doomed to relive them. As we study the lessons of the last ten years it is very clear that if we do not retain the Manufacturing Clause as a bargaining chip in dealing with foreign governments, we are going to end up with no protection here and still be faced with horrendous trade barriers in our efforts to sell into other countries. S. 1822 will in all probability result in the loss of quite a few jobs in the United States. But it will at least give us some offset, assuming that as we dismantle the Manufacturing Clause, our trading partners will be required to dismantle their barriers. With equal access we would expect to save many of these jobs.

It is therefore, with considerable pride that we support S. 1822.

ATTACHMENT A

CANADA AND THE TORONTO AGREEMENT

Background -- In March of 1968 there was signed in Toronto, Canada an agreement that may well be unique in the annals of international trade.

Representatives of publishers, manufacturers and printing unions gathered in Toronto, to examine the conflicting needs of the printing and publishing industries in the two countries. Representatives from the United States included officers of various printing unions, as well as representatives from the Book Manufacturers' Institute, the Printing Industries of America, the American Book Publishers Council, and the American Educational Publishers Institute, the last two being forerunners of the current Association of American Publishers. Canadians represented corresponding unions and printing and publishing associations.

We were faced with conflicting objectives and motivations. On the U.S. side, the manufacturers and unions were reluctant to give Canada an exemption under the Manufcturing Clause. We did, however, recognize the merit of the position advanced by Canadian printers in our Book Manufacturers' meeting. Canadian printers were understandably critical of their inability to bid on U.S. authors' works. U.S. publishers favored an exemption for Canada under the Manufacturing Clause, partly because they wanted to avail themselves of Canadian printing sources, and also because they hoped Canada would join the Florence Agreement and eliminate tariffs on U.S. published books they shipped into Canada. I am not totally familiar with the objectives of our Canadian counterparts but, obviously, Canadian printing unions and printers wanted to be able to bid on U.S. authored works. Further, it seems clear that publishers in Canada hoped to be able to use U.S. printers. And, perhaps, also some publisher- distributors hoped to be able to obtain U.S. published materials without the weight of tariffs imposed as they crossed the border.

The Agreement -- The result of all of our deliberations was a truly remarkable agreement. Essentially, the parties agreed to do four things --

1. U.S. representatives agreed to do their utmost to obtain for Canada an exemption under our Manufacturing Clause.

2. Canadian representatives agreed that as soon as the Manufacturing Clause exemption was obtained, they would urge the Canadian government to sign the Florence Agreement, thereby obligating Canada to remove all tariffs on educational, scientific and cultural materials. It was specifically noted that acceptance of the Florence Agreement could be accomplished in Canada without an Act of Parliament.

3. The Agreement also spelled out some actions to be taken to oppose the Stockholm protocol and other attempts to weaken international copyright protection under the Berne and Universal Copyright Convention. I shall not take the time to explain these undertakings since they are not relevant to our subject today ... except to note that so far as I know, all parties have honored their commitments under the Clause.

4. The final provision of the Toronto Agreement, and certainly one of the most important, reads, "It is anticipated that cooperative efforts on,

and resolution of, the foregoing issues in a mutually satisfactory manner will lead promptly to definite future cooperation between the United States and Canadian groups on the removal of any remaining barriers to trade between the two countries affecting their printing and publishing industries."

Performance under the Toronto Agreement -- When we look at the record to determine how well the parties have carried out their Toronto Agreement obligations, we find that we in the United States have honored our commitments, but the Canadian record is not nearly so satisfactory.

Although Copyright Law revision in the United States was delayed because of cable T.V. and other considerations, we honored our commitments, consistently pushing for a Canadian exemption in the Manufacturing Clause. And, indeed, the new Copyright Bill did contain a Canadian exemption.

Canada has never signed the Florence Agreement. Nor have we seen any action to remove other tariff barriers as contemplated by the Toronto Agreement.

The one thing Canada has done is temporarily to remove duties on books shipped into Canada. It is significant, I think, to note that the Canadian order to eliminate duties on books extends only to July 1, 1986, the date when our Manufacturing Clause is due to end. In the Congressional floor debates that attended consideration of the new Copyright Law, one Congressman took special care to note that continuation of the Manufacturing Clause and our ability to grant or withhold an exemption for Canada, stands as our only weapon in dealing with Canada on tariff problems. How prophetic his words were. With the Manufacturing Clause now scheduled to end in 1986, the Canadian order is written so that duties on books entering Canada will be reinstated as our Manufacturing Clause ends.

STATEMENT OF JAMES J. NORTON, PRESIDENT, GRAPHIC COMMUNICATIONS INTERNATIONAL UNION, WASHINGTON, DC

Mr. NORTON. Thank you, Mr. Chairman. I, too, appreciate the opportunity to appear before the Finance Committee. I would respectfully request that my printed statement be included in the record.

The CHAIRMAN. Without objection.

Mr. NORTON. Thank you, sir. I am James J. Norton, president of the Graphic Communications International Union, which is an affiliate of the AFL-CIO; and I am appearing today to testify in favor of S. 1822. If the manufacturing clause is allowed to expire, employment effects would be devastating.

In 1981, the U.S. Department of Labor study anticipated the loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the manufacturing clause expired. As a labor official, I am disappointed to read in the 1986 Department of Labor study in which statistics have been sloppily and wrongfully manipulated to support a politically motivated goal. The study purposely chooses the most limited scenarios of job opportunity losses, almost totally ignores indirect job loss impacts, and makes no effort to estimate the impact of investments in plant and equipment which would occur if the clause expires.

The administration has also been raising concerns about an adverse GATT ruling. Amazingly, the U.S. Trade Representative did not exercise our Nation's right to veto the findings of the GATT panel. Because the GATT rules by consensus, the United States had the right to veto the GATT panel's ruling. By his inaction, the U.S. Trade Representative failed to represent the interest of the United States as expressed by the Congress in passage of the 1982 extension.

I should add, however, that since we expect the Europeans to be certified under S. 1822, we see no legitimate reason for European retaliation. Also, Mr. Chairman, the manufacturing clause is not an impediment to signing the Berne Convention. Mr. Arpad Bosch, the executive director of the World Intellectual Property Organization, which administered the Berne Convention, has stated that the manufacturing clause is probably not an obstacle to signing the Berne Convention.

Mr. Chairman, I understand that there has been discussion among some members of this committee or among staff aides that the labor rights provision of S. 1822 as passed by the Judiciary Committee should be stricken. We cannot support any such effort. The labor rights language is precisely that used in legislation passed in the last few years relative to the generalized system of preferences.

Those who call those provisions "protectionist" are mistaken. They are no more or no less reciprocal than any other provision of S. 1822. Their retention in S. 1822 is vital to the vast majority of the GCIU and to the rest of the labor movement in this country.

Mr. Chairman, in summary, I am convinced that allowing the manufacturing clause to expire would be a grave mistake. The price for allowing the manufacturing clause to expire would be hundreds of thousands of U.S. jobs and thousands of stricken communities. The price is simply not worth it. Thank you.

[The prepared written statement of Mr. Norton follows:]

TESTIMONY OF JAMES J. NORTON, PRESIDENT
GRAPHIC COMMUNICATIONS INTERNATIONAL UNION
BEFORE THE SENATE COMMITTEE ON FINANCE

HEARINGS ON S. 1822 TO AMEND THE MANUFACTURING CLAUSE OF THE COPYRIGHT LAW

June 10, 1986

BACKGROUND

Mr. Chairman, I am James J. Norton, President of the Graphic Communications International Union, an affiliate of the AFL-CIO. I am testifying today on behalf of the 200,000 members of the G.C.I.U., as well as the membership of the AFL-CIO Industrial Union Department and the Newspaper Guild. Of the five million workers represented by these unions, 400,000 members are employed by the printing industry.

I am appearing today to testify in favor of S. 1822, a bill which will extend the Manufacturing Clause of the Copyright Act beyond July 1, 1986.

For 95 years, the Manufacturing Clause of the Copyright Act has required that most printed material of a preponderantly non-dramatic literary nature and written in the English language by an American author or by an author domiciled in the United States must be printed in either the United States or Canada in order to enjoy the full and unqualified protection of the U.S. copyright laws.

S. 1822 differs from present law in that it will extend the Manufacturing Clause while allowing the U.S. Trade Representative and the Secretary of Labor to exempt countries from the Manufacturing Clause by certifying to Congress that the country: 1) extends full copyright protection to foreign nationals, 2) is a fair trading partner in printed goods, and 3) protects the basic rights of its workers as defined by the Trade Act of 1974.

The fresh approach embodied in S. 1822 assures not only the continued health and vitality of our domestic printing industry, but also establishes a unique mechanism to recognize and reward our true fair trading partners.

EMPLOYMENT EFFECTS OF THE MANUFACTURING CLAUSE

Since 1891, the Manufacturing Clause has been the trade law for the American printing industry. In this historic role, the Manufacturing Clause has encouraged the development of U.S. printing into the most productive, modern printing industry in the world. Our domestic printing industry employs 1.3 million hard-working men and women. The industry is also notable as our Nation's largest and most important sector of small manufacturers.

If the Manufacturing Clause is allowed to expire, the employment effect would be devastating. A 1981 U.S. Department of Labor study anticipated a loss of up to 172,000 jobs in the printing industry and a total loss of 367,000 job opportunities throughout our economy if the Manufacturing Clause expires. At a time when hundreds of thousands of jobs are already being lost in many of our most basic industries, we cannot afford to allow yet another American industry be victimized by our rising trade deficit.

Even as I speak, unfair foreign printers are getting ready to penetrate our domestic market with their low-wage goods. Our Nation's printing market, with annual sales exceeding $100 billion, is the largest in the world. While our domestic industry currently dominates this market, the expiration of the Manufacturing Clause would dramatically and irreversibly reduce the amount of printed material manufactured by American workers.

In the absence of the Manufacturing Clause, large American printers could also begin offshore production of printed material in low-wage areas. In fact, in his 1981 testimony before this Subcommittee, Mr. Arthur Prine of R.R. Donnelly and Sons Co. testified that:

"We at R.R. Donnelly are doing everything we can to maintain the vitality of the U.S. Printing Industry; we are doing everything we can to keep these jobs in the United States. But if the Manufacturing Clause expires, if you force us to export our business, to send jobs overseas, we are prepared to do so. We do not want to export jobs, but if you force us to the wall we are prepared to move. We are large; we are well-staffed; we have the necessary manufacturing and technical resources; and we are well-financed. We can move overseas if you force us to do so."

Clearly, only the largest American printing companies have the ability to manufacture printed goods in low-wage countries to be sold in our domestic market. However, without the protection of the Manufacturing Clause, these companies - together with foreign printing companies - could soon control the domestic printing market.

Printing and communications technology are sufficiently advanced to allow increased mobility for foreign printers and for our Nation's largest printers. But while printing companies are increasingly mobile, American printing workers cannot follow their jobs to low-wage plants in the Pacific or Caribbean Basins. Clearly, if the Manufacturing Clause is allowed to expire, hard-working men and women will once again have to pay the heaviest price.

RESPONSE TO THE 1986 DEPARTMENT OF LABOR STUDY

Mr. Chairman, I am surprised that the Department of Labor is not here to discuss their flawed 1986 study which is quoted so often by other members of the Administration. As a labor official, I am disappointed to read a DOL study in which statistics have been sloppily and wrongfully manipulated to support a politically motivated goal.

The study purposefully chooses the most limited scenarios of job opportunity losses, almost totally ignores indirect job loss impacts, ignores the experience of increased printing imports from Canada (which is currently exempt from the Manufacturing Clause), ignores the potential loss of jobs to Mexico, and makes no effort to estimate the impact on investments in plant and equipment which would likely occur if the Manufacturing Clause were terminated.

For example, the DOL study [page 71] understates employment in book printing for 1982. The DOL figure is 28,000 while the Census of Manufacturers for the same year concludes the correct figure is 44,700. There is an apparent effort by DOL to downplay the employment impact of the Manufacturing Clause throughout its study by use of statistics which are erroneous.

The DOL study also notes that the printing and publishing industries have, overall, maintained a favorable balance of trade [DOL study, page 10]. However, Department of Commerce statistics indicate that this phenomenon is based on a surplus of exports of periodicals, books and pamphlets. The U.S. is currently experiencing a trade deficit with regard to newspapers, commercial printed matter and items which come under the heading of blankbooks and looseleaf binders.

When the Commerce figures are examined, they reveal a very significant conclusion. The U.S. is continuing to experience a trade surplus in the very areas that are clearly covered by the Manufacturing Clause. But, at the same time, we are suffering from a trade deficit with respect to those printed materials that are not covered by the Clause.

The DOL study also fails to note that the overall trade surplus in the printing and publishing industries is on a clear path of decline. According to Department of Commerce statistics, exports exceeded imports by 102 percent in 1982, 66 percent in 1983, and only 29 percent in 1984. For the first 10 months of 1985, the dollar value of book exports decreased by 6.3 percent while the dollar value of book imports increased by 14.5 percent. In terms of units of books, the U.S. became a net importer of books in 1983. Now, it appears the U.S. is about to become a net importer of books measured by dollar value, as well.

Regrettably, DOL attempts to downplay -- if not ignore -- this so-called indirect impact on printing establishments that produce bread wrappers as well as periodicals or books. The impact on a printing company (most of which are small businesses employing an average of 20 people) of a loss of book or periodical business will be far from indirect. Idle equipment translates not only into decreased productivity, but also decreased cash flow. And decreased cash flow can only serve to make it difficult to maintain current employment levels or make payments on equipment. This is a recipe for layoffs and/or business failure.

According to DOL, three-fourths of all newspapers and more than 98 percent of periodicals are printed on a weekly or less frequent basis [DOL study, pages 25 and 26]. DOL claims nevertheless that these materials would not be printed outside the U.S. if for no other reason than the press of last-minute advertising deadlines. Its contention is not supported by facts, nor by the reality of the modern world of satellite telecommunications and air transportation. [Note that, as with other even more bulky products than books -- such as automobiles from Japan -- the cost of transportation is not likely to deter even distant Pacific Basin countries from being able to make a major penetration of the U.S. market.]

Even DOL recognizes that books are more susceptible to being printed abroad. Its study notes the uncertainty of the potential of import penetration in this sector of the industry. However, it ignores the fact that state-of-the-art printing technology is already in place in many Pacific Basin countries and could easily be in place in the Caribbean Basin, as well. Thus, books ranging from low-quality paperbacks to high-quality hardbound books can be -- and are quite likely to be -- printed in low-wage countries and imported to the United States.

In fact, not one of DOL's scenarios includes any estimate of the loss of indirect job opportunities [DOL study, page 43]. However, based on a "more aggregated I-O [input-output] approach" the Department states that "total job opportunity losses inclusive of those which may occur outside of the printing and publishing industries" could be anywhere from 1,400 to 47,300 [DOL study, pages 44-45]. At the same time, DOL states that: "However, offsetting export increases (within or outside of printing and publishing) may eliminate some or all of these job opportunity losses." Given present U.S. trade policies, it is incredible to argue that there will be offsetting export increases either within or outside of printing and publishing.

Clearly, the 1986 DOL study is so riddled with errors and misrepresentations that the analysis is worthless as a predictive tool. As a labor official, I can only hope that the DOL does not use this wrongful tactic on any future issue of such national significance.

SUMMARY OF THE GATT DECISION

The Administration has also been raising concerns about an adverse GATT ruling. A 1984 GATT panel, which was made up of representatives from Malaysia, India and Finland, ruled that the extension of the Manufacturing Clause could no longer be considered "existing legislation" subject to the "grandfathering" provisions of the GATT because Congress had attached a date to the extension of the Manufacturing Clause in 1976, and because Carter and Reagan trade officials had suggested to our trading partners that the Clause would not be extended in 1982.

Amazingly, the U.S. Trade Representative did not exercise our Nation's right to veto the findings of the panel. Because the GATT rules by consensus, the United States had the right to veto the GATT panel ruling. By his inaction, the USTR failed to represent the interests of the United States as expressed by the Congress in passage of the 1982 extension.

Now, the USTR and other Administration agencies hope that the adverse GATT ruling - which they caused to occur - is reason enough to require the termination of the Manufacturing

Clause. They warn that U.S. industries will face retaliation if the Clause is extended. These claims are but a thin smokescreen to cover the fact that this administration objects to the very substance of the Manufacturing Clause. They know that the U.S. has far more serious GATT-related complaints against our trading partners which the Administration has pursued only with great reluctance - if at all.

On May 16, 1984, the General Agreement on Tariffs and Trade panel on the United States Manufacturing Clause recommended that the United States bring the Manufacturing Clause into line with its obligations under the General Agreement. This recommendation was based solely upon the Panel's determination that the European Communities were justified in their belief that the 1976 six-year extension of the Manufacturing Clause represented U.S. intent to abandon the Clause in 1982 and thus the 1982 extension was inconsistent with its obligations under GATT.

The adverse GATT recommendation is the result of the Panel's misunderstanding of the U.S. legislative process. The European Communities believed that, because the U.S. Congress extended the Manufacturing Clause in 1976 for a period of six years, Congress was providing some sort of signal that it intended to allow the expiration of the Manufacturing Clause. The USTR, however, argued that the Congress used the expiration date as a means of ensuring renewed debate on this important legislation (as it does with many other statutes which contain an expiration date).

The GATT recommendation also relied on alleged representations made by U.S. representatives to the Tokyo Round of trade negotiations in 1977 that the Manufacturing Clause would not be extended beyond its then-scheduled expiration during 1982. In response, the USTR noted that the European Communities could "reasonably have anticipated the possibility of action by the United States to extend the Manufacturing Clause" and that there clearly was no quid pro quo discussed during the Tokyo Round in return for the understanding claimed by the European Communities.

Indeed, the USTR noted that the Conference Committee report accompanying the 1976 extension of the Manufacturing Clause noted that Congress was requesting more data from the Register of Copyrights to determine whether the continuation of this long-standing provision of law should be reassessed. Continuing, the USTR stated that, "The text of the letter to the Register of Copyrights had referred expressly to possible amendment of the copyright law to extend applicability of the Manufacturing Clause...." (emphasis added)

In sum, therefore, the GATT recommendation was based on the position that the U.S. had committed itself in 1976 to terminating the Manufacturing Clause. This ruling failed to consider the legislative history associated with the 1976 legislation, the lack of any European effort to achieve negotiated trade concessions related to the alleged anticipation of the Clause's expected termination in 1982, and an understanding of the U.S. legislative process. By consenting to the GATT ruling, the USTR failed to represent U.S. trade policy as set by the Congress and allowed the European Community to make exaggerated damage claims. We can only hope that the USTR will effectively represent the interests of our Nation during any future GATT sessions negotiating the size of settlements. I should add, however, that since we expect the Europeans to be certified under S. 1822, we see no legitimate reason for European retaliation.

THE BERNE CONVENTION

Also, Mr. Chairman, the Manufacturing Clause is not an impediment to signing the Berne Convention. Mr. Arpad Bogsch, the Executive Director of the World Intellectual Property Organization, which administers the Berne Convention, has stated that the Manufacturing Clause is probably not an obstacle to signing the Berne Convention. In Senate Judiciary Committee testimony last year, he said that the Berne Convention would not be interested in U.S. internal treatment of its authors and that the Clause has only a marginal effect on foreign authors. Clearly, the Manufacturing Clause is not the obstacle to signing the Berne Convention.

EFFECT OF THE MANUFACTURING CLAUSE ON THE COMPUTER INDUSTRY

In recent months, the computer industry has formed a coalition of business groups opposed to an extension of the Manufacturing Clause. The coalition argues that the Manufacturing Clause will hinder future intellectual property negotiations. This claim is made despite the fact that the

Manufacturing Clause does not affect foreign authors and only affects a small segment of the intellectual property field.

The opposition of the computer industry is not surprising. Many computer firms do all or most of their manufacturing in countries which would not be certified under S. 1822. These countries often have significant trade barriers to U.S. goods, don't protect intellectual property, and have disgraceful records on basic workers rights. Not only do these computer firms manufacture their computers and components in these countries, but they also print manuals and other materials in these same countries. When these products are exported to the United States, the manuals are either in violation of the Manufacturing Clause or no copyright is claimed.

If the Manufacturing Clause is allowed to expire, then the computer industry could manufacture its entire package overseas without concern over copyright protection. Without the Manufacturing Clause, many of these companies would not have to employ a single American manufacturing worker.

Business Week recently published a series of lengthy articles on the "Hollow Corporation," which is causing the deindustrialization of America. Many of the firms which are lobbying against extension of the Manufacturing Clause are quickly becoming hollow corporations, merely marketers of goods developed and manufactured overseas. Mr. Chairman, allowing the Manufacturing Clause to expire would only accelerate the hollowing of industrial America. While allowing the overseas production of copyrighted computer manuals may be profitable for certain individual companies, American industry and American workers will suffer.

POSSIBLE COSTS TO THE U.S. GOVERNMENT

The expiration of the Manufacturing Clause would also exact a high cost from our Government. A Book Manufacturers Institute study has indicated that 60 percent of industry workers are either unskilled or semi-skilled workers. These workers would be among the first workers to be affected by job losses. These job losses would be even more tragic because the tight federal budget limits the funds available for unemployment compensation or job training if these workers lose their jobs.

In order to realize the extent of possible costs to the U.S. Government, the case of Australia may be instructive. Over a decade ago, Australia opened its markets to competition from low-wage Pacific Basin competitors. The Australian printing industry sustained such heavy losses that the Australian government now must provide a 33 percent direct subsidy for its printing industry.

We have no reason to suppose that our domestic printers would fare any better in competition with foreign printers or large U.S. printers operating overseas. Clearly, the United States Government cannot afford to follow the Australian example.

THE URGENT NEED TO EXTEND THE MANUFACTURING CLAUSE

As president of an industrial union, I have joined in the fight for the survival of many of our Nation's most basic industries. One industry after another has been targeted and then destroyed by foreign manufacturers. The combination of unfair trade practices and the overvalued dollar has deprived millions of working men and women and their families of their livelihoods. I am determined that printing workers will not become the next victims.

I see no reason for our Nation to make yet another unilateral trade concession. This Administration does not prepare for nuclear arms negotiation sessions by scrapping our weapons programs. Why does it prepare for trade talks by dismantling our trade laws? Is this any way to negotiate a favorable agreement?

Mr. Chairman, I am convinced that allowing the Manufacturing Clause to expire would be a grave mistake. That would open the way for the destruction of our successful printing industry. The price for allowing the Manufacturing Clause to expire would be hundreds of thousands of U.S. jobs and hundreds of stricken communities. The price is simply not worth it. I therefore urge Congress to pass S. 1822 and retain the Manufacturing Clause of the Copyright Act.

The **Chairman**. Mr. Norton, tell me why the Labor Department study is flawed.

Mr. **Norton**. Initially, sir, when the first study was taken, there was a great deal of care——

The **Chairman**. When was that?

Mr. **Norton**. 1981.

The **Chairman**. All right.

Mr. **Norton**. There was a great deal of care to contact organized labor for its input into the study. And the various segments that make up the printing industry in total were also contacted. The 1986 study did not do that. In my own personal experience, as an official of one of the largest printing industries—printing union in the industry—we were not contacted at all. To the best of my knowledge, the survey was confined to only one or two segments of the entire industry. They did not, for instance, contact the commercial side of the industry at all.

That is why we believe it to be a flawed survey.

The **Chairman**. Let me pursue this just a bit. You don't necessarily have to ask some portion of the industry to get accurate statistics. I am more concerned with why you think it is statistically flawed or that there is something wrong with its conclusions, other than that certain people were not asked.

Mr. **Norton**. It is my apprehension, sir, that the survey concentrated on just one or two segments, which would have coincided with a predicted survey that the Department might have been seeking. Many of the personnel that had participated in 1981 in the survey were still present, and they did not participate in the 1986 survey at all.

The **Chairman**. So, once more, it is basically that they were left out of being asked questions; and the report, therefore, did not take into effect in its conclusions answers that would have been adverse to what you think was a predisposed decision to come to that conclusion?

Mr. **Norton**. I do have an answer in writing if you would care to look at it. We could put it in the record, sir.

The **Chairman**. Yes. You can put it in the record, but I would like to know what it is.

Mr. **Norton**. The 1986 study by the Department of Labor on the manufacturing clause is an attempt by this administration to produce a study which ignores the very tragic impact which the expiration of the manufacturing clause will have on American workers. Instead of producing cooked-up studies and testifying before Congress in opposition to the clause, if the administration would spend time trying to negotiate fair trade in printing, our industry would not be facing the life-threatening battle it is facing today.

The Department of Labor study purposely chose the most limited scenarios of job opportunity losses, almost totally ignored job loss impact, ignored the experience of increased printing imports from Canada when we granted them an exception from the clause, ignored the potential loss of jobs to Mexico, and makes no effort to estimate the impact of investments in plant and equipment which would likely occur if the manufacturing clause is terminated.

In addition, it focuses on book manufacturing, but ignores the entire field of commercial printing. I have prepared this response to that question, Mr. Chairman.

[The prepared response of Mr. Norton follows:]

COMMENTS
ON THE
FEBRUARY 1986 REPORT
OF THE
U.S. DEPARTMENT OF LABOR
ON THE
POTENTIAL EMPLOYMENT EFFECTS OF A TERMINATION OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT ACT

May, 1986

INTRODUCTION

On February 26, 1986, Secretary of Labor Brock transmitted to Senator Charles McC. Mathias, Jr., chairman of the Senate Subcommittee on Patents, Copyrights and Trademarks, a study entitled "Termination of the Manufacturing Clause: An Analysis of Potential Employment Effects." This study had been requested of the Department of Labor (DOL) by Senator Mathias in January, 1985.

This study produces four scenarios with potential job opportunity loss impacts ranging from 900 to 23,300. At the outset, it should be noted that the report notes the imprecision of its own estimates. For example:

> "It should be noted that, for a variety of reasons discussed in the study, the ultimate employment effects of termination of the Manufacturing Clause can not be estimated with precision." [Page 2 of Secretary Brock's letter of transmittal]

> "There is little consensus about the portion of the output of newspapers, periodicals, book publishing, and book printing sectors that would be susceptible to foreign production should the Clause be terminated." [Page i of the Executive Summary]

Nevertheless, DOL throws caution to the wind. Its study purposefully chooses the most limited scenarios of job opportunity losses, almost totally ignores indirect job loss impacts, ignores the experience of increased printing imports from Canada (which is currently exempt from the Manufacturing Clause), ignores the potential loss of jobs to Mexico, and makes no effort to estimate the impact on investments in plant and equipment which would likely occur if the Manufacturing Clause were terminated.

The Current State of the Industry

As the DOL study notes, the domestic printing and publishing industries are currently "relatively healthy" [Executive summary, page ii]. Overall, these industries have been growing at a faster rate than general industrial rate of growth over the 1982-83 period [DOL study, page 5]. These industries are also productive [DOL study, pages 6, 8], with output growth exceeding employment growth.

The DOL study claims [[age 8] that "compared to all manufacturing industries...the printing and publishing industries tend to use significantly lower proportions of production workers relative to total employees." This claim is used as the basis of an implication that the printing and publishing industries are not relatively labor-intensive.

However, the 1982 Census of Manufacturers indicates that, all U.S. industries employed [as measured by person-years] 9.7 workers per million dollars of output. The comparable figure for book manufacturing was nearly twice that level (18.7). Similarly, commercial letterpress firms employed 18.8 workers and commercial lithographers employed 16.0 workers per million dollars of output. These figures demonstrate that printing and publishing are comparatively labor-intensive.

In a similar vein, the DOL study [page 71] understates employment in book printing for 1982. The DOL figure is 28,000 while the Census of Manufacturers for the same year concludes the correct figure is 44,700. There is an apparent effort by DOL to downplay the employment impact of the Manufacturing Clause throughout its study by use of statistics which are erroneous.

The DOL study also notes that the printing and publishing industries have, overall, maintained a favorable balance of trade [DOL study, page 10]. However, Department of Commerce statistics indicate that this phenomenon is based on a surplus of exports of periodicals, books and pamphlets. The U.S. is currently experiencing a trade deficit with regard to newspapers, commercial printed matter and items which come under the heading of blank-books and looseleaf binders.

When the Commerce figures are examined, they reveal a very significant conclusion. The U.S. is continuing to experience a trade surplus in the very areas that are clearly covered by the Manufacturing Clause. But, at the same time, we are suffering from a trade deficit with respect to thos printed materials that are not covered by the Clause.

The DOL study also fails to note that the overall trade surplus in the printing and publishing industries is on a clear path of decline. According to Department of Commerce statistics, exports exceeded imports by 102 percent in 1982, 66 percent in 1983, and only 29 percent in 1984. For the first 10 months of 1985, the dollar value of book exports decreased by 6.3 percent while the dollar value of book imports increased by 14.5 percent. In terms of units of books, the U.S. became a net importer of books in 1983. Now, it appears the U.S. is about to become a net importer of books measured by dollar value, as well.

As Congress debates the fate of the Manufacturing Clause, it is appropriate to consider the negative impact on our record trade deficit that would result from a termination of the Clause. The U.S. has become a debtor nation for the first time since World War I. In fact, we are the fourth largest debtor nation in the world (*The Wall Street Journal*; 3/19/86). The DOL study makes no mention of this vital economic issue.

DOL has concluded that all commercial printing should be eliminated from its study of the employment impacts of terminating the Manufacturing Clause. As used by DOL, commercial printing encompasses all materials in SIC Code 275. While the study notes the broad inclusiveness of this SIC Code [DOL study, page 4], it chooses to focus on "Certain outputs such as bread wrappers, menus, etc." -- which it excludes because copyright is not claimed for these items -- and calendars, post cards, playing cards, sheet music, etc. -- which are not literary and are thus not covered by the Manufacturing Clause [DOL study, page 30].

However, as Secretary Brock notes in his letter of transmittal [page 2]:

> "...[C]ommercial printers do perform some printing for other sectors which produce outputs directly affecting by the Manufacturing Clause (i.e., newspapers, periodicals, and books), and to the extent that these sectors utilize commercial printers, the commercial printing sector

> could be indirectly affected by the termination of the Manufacturing Clause."

Regrettably, DOL attempts to downplay -- if not ignore -- this so-called indirect impact on printing establishments that produce bread wrappers as well as periodicals or books. The impact on a printing company (most of which are small businesses employing an average of 20 people) of a loss of book or periodical business will be far-from-indirect. Idle equipment translates not only into decreased productivity, but also decreased cash flow. And decreased cash flow can only serve to make it difficult to maintain current employment levels or make payments on equipment. This is a recipe for layoffs and/or business failure.

In addition, DOL's total exclusion of all commercial printing from its job impact estimates is unfounded and inaccurate. For example, many directories and at least some catalogues are clearly covered by the Clause. Telephone directories and catalogues whose content is less than 50 percent illustrations fall into this category. SIC code statistics may not be sufficiently refined to select these types of printed materials from the broad category known as commercial printing, but DOL apparently made no effort to survey the industry in order to estimate the magnitude of commercial printing that is covered by the Manufacturing Clause.

The Inadequacy of DOL's Scenarios

Strangely, amidst all of its claims about the uncertainty of data upon which to base its study, DOL has chosen to ignore totally the one source of data which provides a clear indication of what will happen if the Manufacturing Clause is allowed to expire.

In 1976, Congress granted Canada an exemption from the Manufacturing Clause. This exemption took effect as of January 1, 1978. Since then, imports of newspapers, books and periodicals from Canada have increased substantially. While DOL argues that timeliness will prevent the foreign publication of most newspapers and periodicals [see, for example, DOL study, page 25], weekly and monthly newspapers and periodicals are currently being printed in Canada and imported into the U.S. Even more significant, Department of Commerce figures indicate that imports of books, newspapers and periodicals from Canada are growing at approximately three times the rate of increase of imports of all other products. At a time when the U.S. trade deficit worldwide is at record-setting levels, it is clear that the Manufacturing Clause exemption has made it both possible and advantageous for Canada to increase its level of exports of printed materials to the U.S. at a level which vastly exceeds the proportionate increase in exports of other products to the United States.

One may argue that Canada's geographical proximity to the U.S. makes this experience inapplicable to other countries. However, this ignores the attractiveness of low wages which exist in the Pacific and Caribbean Basin countries. If foreign printing workers are paid 15 to 50 percent of their U.S. counterparts, the lure of lower wage costs may well attract either large U.S. printers or foreign firms to establish operations in Singapore, Hong Kong, Korea, Taiwan or the Dominican Repubic. According to DOL, three-fourths of all newspapers and more than 98 percent of periodicals are printed on a weekly or less frequent basis [DOL study, pages 25 and 26]. DOL claims nevertheless that these materials would not be printed outside the U.S. if for no other reason than the press of last-minute advertising deadlines. Its contention is not supported by facts, nor by the reality of the modern world of satellite telecommunications and air transportation. [Note that, as with other even more bulky products than books -- such as automobiles from Japan --, the cost of transportation is not likely to deter even distant Pacific Basin countries from being able to make a major penetration of the U.S. market.)

Even DOL recognizes that books are more susceptible to being printed abroad. Its study notes the uncertainty of the potential of import penetration in this sector of the industry. However, it ignores the fact that state-of-the-art printing technology is already in place in many Pacific Basin countries and could easily be in place in the Caribbean Basin, as well. Thus, books ranging from low-quality paperbacks to high-quality hardbound books can be -- and are quite likely to be -- printed in low-wage countries and imported to the United States.

DOL has ignored our neighbor to the south. If Canada, with its relatively comparable wages, can profit greatly from its Manufacturing Clause exemption, Mexico -- with its low wages -- is a likely source of imports of books, as well as fairly time sensitive newspapers and periodicals (due to its geographical proximity to states from Texas to California). A 1983 study by the International Trade Commission [Publication 1402] notes that Mexico is already the largest foreign supplier of periodicals to the U.S. [page 170].

With the expiration of the Manufacturing Clause, low wage foreign countries will inevitably become attractive markets to print materials to be exported to the United States. This attractiveness may well lure some large U.S. printers to invest in plant and equipment overseas. It will surely drain business away from domestic printers, thus decreasing their need to make new plant and equipment expenditures. The DOL study totally ignores the impact on the U.S. economy of this displacement of investment in domestic plant and equipment.

In fact, not one of DOL's scenarios includes any estimate of the loss of indirect job opportunities [DOL study, page 43]. However, based on a "more aggregated I-O [input-output] approach" the Department states that "total job opportunity losses inclusive of those which may occur outside of the printing and publishing industries" could be anywhere from 1,400 to 47,300 [DOL study, pages 44-45]. At the same time, DOL states that: "However, offsetting export increases (within or outside of printing and publishing) may eliminate some or all of these job opportunity losses." Given present U.S. trade policies, it is incredible to argue that there will be offsetting export increases either within or outside of printing and publishing.

Mr. PRINE. Senator, could I just add one little item to that also?

The CHAIRMAN. Yes.

Mr. PRINE. I think, in all fairness, that trying to project what that job loss is, is extremely difficult; and the basic reason it is so difficult is that we think that the real threat that is involved here is that the Japanese will move into the Pacific Basin with a stay of our long-run production equipment, which does not now exist there. So, to the extent that the studies looked at costs and price levels that exist today, those are not really particularly relevant to what the future situation would be.

And I say that even though most of what I have said is really not keyed to job loss; I should point that out, but that may help as to why these figures range all over the place.

The CHAIRMAN. Senator Long.

Senator LONG. No questions, Mr. Chairman.

The CHAIRMAN. Senator Grassley.

Senator GRASSLEY. No questions, Mr. Chairman.

The CHAIRMAN. Then, let me go to Mr. Henriques. One of the arguments that is being made, Mr. Henriques, is that you want to move your printing operations overseas like you moved your computer operations overseas. I am quoting; I am not making that charge; but you know the allegation that is made. Do you want to respond to that?

Mr. HENRIQUES. Yes, sir; let me step back and say that most of the companies in my industry are multinational companies, and they have chosen to become competitive internationally by placing manufacturing plants in market areas. Now, it is not acceptable in many market areas simply to have salesmen go in; if you want to involve the economy and the infrastructure of that country, it is necessary to have manufacturing operations——

The CHAIRMAN. In reverse to what the Japaoese are doing in the auto industry; they are opening plants here.

Mr. HENRIQUES. That is right, sir. Because of the nature of the products that we manufacture—a very short life for the product, 18 to 24 months—and a lot of changes as the product is being developed, the manuals and the instructional material that accompany those products need to be geared to the latest version of the product that is being manufactured. And so, it only makes good sense to print the manual at the same location that you are manufacturing the product, package it together, and then export the whole package into the United States, or import the whole package into the United States.

The CHAIRMAN. Mr. Wilbourn, let me ask you this: You indicate there will be a relatively slight job loss, in your judgment?

Mr. WILBOURN. That is correct.

The CHAIRMAN. And yet, you say that there will be a significant reduction in the cost of books to consumers because of the increased competition of printing overseas—from printing overseas?

Mr. WILBOURN. On average. The study conducted by the Institute for International Economics did determine that.

The CHAIRMAN. So, you are assuming that we are going to have more cheaper books printed overseas? They are printed more cheaply; the quality of the book may be just as good, but they will be printed overseas?

Mr. **Wilbourn**. I believe that that would be correct. I remind you that there is a great deal of difficulty for people in businesses, such as the businesses that Mr. Henriques represents, having their manuals and things of that nature printed abroad. That is included in this estimate. There is an expense of having these things written by someone who is not an American, someone who is a foreigner, in order to obtain copyright.

The **Chairman**. What I am curious about is this: I am perfectly aware of the argument that we must keep the manufacturing clause because it protects printing industry jobs in this country, even though this may result in higher prices for books. Now, that is a trade off we all understand, but I am curious as to how we can move the book printing overseas if that happens, or some portion of it, and still avoid job losses in the U.S. printing industry.

Mr. **Wilbourn**. It is a good point, and I would be happy to provide the information to you for the record.

[The prepared information from Mr. Wilbourn follows:]

CASE M–1

Book Manufacturing

PERIOD OF RELIEF

1891 to present

SUPPLIERS AFFECTED

Global (primarily East Asia)

RELIEF ACTION

Since passage of the International Copyright Act on 3 March 1891, the US book printing industry has been more or less insulated from foreign competition. The 1891 act included the so-called "manufacturing clause," which required that books and periodicals published in the United States also be printed and bound in the United States in order to qualify for US copyright protection. (BIE 1982, 87)

"The manufacturing clause was amended by the 1909 copyright act to generally require that English-language books and periodicals be manufactured in the United States in order to be registered for copyright purposes and that foreign-language works of domestic origin be domestically manufactured as well." By 1955 the scope of the clause had been narrowed to English-language works by US authors or domiciliaries. (USITC 1402, 1–2)

In the Copyright Act of 1976 (17 USC 601), Congress narrowed effective coverage of the manufacturing clause to only those works "consisting preponderantly of nondramatic literary material by US authors or domiciliaries that are in the English language and are protected by US copyright law." Thus, the current law does not extend to dramatic, musical, pictoral, or graphic works; foreign language, bilingual, or multilingual works; public domain materials; or works consisting mostly of material not subject to the manufacturing requirement. However, the act extended the scope of the clause to cover the "literary portion" of other printed matter in directories, catalogs, and even greeting cards. (USITC 841, 5)

The European Community (EC) asked that the manufacturing clause be put on the negotiating table during the Tokyo Round of multilateral trade negotiations (MTN), but dropped the issue following assurances that the clause would expire in 1982.

In July 1982, however, Congress overrode a presidential veto and extended the clause until 1 July 1986. The EC considered the extension a violation of commitments made in the MTN and argued that it upset the balance of concessions negotiated. Following two rounds of discussion in the winter of 1982–83 under General Agreement on Tariffs and Trade (GATT) Articles XXII and XXIII, the EC demanded $250 million in compensation. The United States offered only $7 million, thus stalemating the discussions. On 20 April 1983, the EC requested formation of a GATT panel to settle the compensation issue, but to date no final decision has been reached. Further, industry experts expect that the clause will be extended again in 1986, for at least another four years, if not indefinitely. (USITC 1402, xi; BIE 1983, 7–9; Lofquist)

CHANGES IN THE INDUSTRY

HR 6198 (1982), which extended the manufacturing clause, also included a provision directing the US International Trade Commission (USITC) to investigate the economic effects of terminating the clause. The Commission concluded that termination would have a relatively small impact on the US printing and publishing industry as a whole, and that the long-term effect on the US competitive position would be generally insignificant. (USITC 1402)

The printing and publishing industry is one of the 10 largest industries in the US manufacturing sector. It is divided into three major segments: commercial publishing and printing, book publishing, and book manufacturing. Of these three segments, according to the Commission's findings, book manufacturing would be the most affected by termination of the manufacturing clause. The Commission estimated that 2 percent to 10 percent of the books published in the United States, with an approximate value of $50 million to $250 million, would be printed and bound abroad if not for the requirements of the copyright law. Industry representatives claim that termination of protection would result in the printing of 30 percent to 45 percent of US-published books overseas. (USITC 1402, xiv, 93)

The Commission found that the US industry is generally competitive with other world producers in terms of production costs, but not labor costs. Thus, the books that would be more profitable to manufacture abroad would be those that are relatively labor intensive, primarily short-run books with color or sewn bindings. Even for these books, much of the labor cost advantage of East Asian producers would be obviated by communication and transportation costs. (USITC 1402, xii–xiv)

The effect on newspapers and periodicals of terminating the manufacturing clause would be negligible because of the time factor. Catalogs and directories would also be minimally affected. These can already be printed overseas, because more space is devoted to pictures than words, but for cost reasons they are not. (USITC 1402, xv–xvi)

Key Statistics

The following data are for the book manufacturing industry only, as this segment of the publishing and printing industry would be most affected by suspension of the manufacturing clause. About half of all imported printed matter is books.

Imports from all sources

Year (during restraints)	*Volume (million units)*	*Value (million dollars)*	*Source*
1979	204	264	BC, FT 246
1980	217	297	BC, FT 246
1981	237	286	BC, FT 246
1982	284	306	BC, FT 246
1983	353	357	BC, FT 246
1984	480	481	BC, FT 246

Apparent consumption[a]

Year (during restraints)	*Volume (million units)*	*Value (million dollars)*	*Source*
1979	2,034	1,850	authors' estimate
1980	2,038	2,033	authors' estimate
1981	2,073	2,245	authors' estimate
1982	2,148	2,060	authors' estimate
1983	2,393	2,348	authors' estimate
1984	2,466	2,656	authors' estimate

a. Estimates based on domestic output plus imports, minus exports.

Market share of imports (percentage of apparent consumption, by volume)

Year (during restraints)	*Share*	*Source*
1979	10.0	authors' estimate
1980	10.6	authors' estimate
1981	11.4	authors' estimate
1982	13.2	authors' estimate
1983	14.8	authors' estimate
1984	19.5	authors' estimate

Output of domestic industry

Year (during restraints)	*Volume[a] (million units)*	*Value (million dollars, producers' shipments)*	*Source*
1979	2.268	2.024	Dessauer, 136; BIE 1983, 7–9
1980	2.330	2.245	Dessauer, 136; BIE 1983, 7–9
1981	2.433	2.556	Dessauer, 136; BIE 1984, 7–10
1982	2.502	2.392	Dessauer, 136; BIE 1985, 27–9
1983	2.645	2.600[b]	Dessauer, 137; BIE 1985, 27–9
1984	2.827	2.845[b]	Dessauer, 137; BIE 1985, 27–9

a. These figures reflect the number of books delivered by manufacturers to publishers, including books exported. They include a small number of books manufactured abroad for US publishers. Given the constraints of the manufacturing clause, such books are likely to be art books or others that consist primarily of illustrations.

b. Preliminary estimate.

Employment in the domestic industry

Year (during restraints)	*Production jobs (average number)*	*Source*
1979	37,100	BIE 1983, 7–9
1980	37,700	BIE 1983, 7–9
1981	39,600	BIE 1984, 7–10
1982	34,500	BIE 1985, 27–9
1983	31,100	BIE 1985, 27–9
1984	33,000[a]	BIE 1985, 27–9

a. Preliminary estimate.

Wages

Year (during restraints)	*Dollars per hour*	*Source*
1979	6.30	BIE 1983, 7–9
1980	6.94	BIE 1983, 7–9
1981	7.60	BIE 1984, 7–10
1982	8.38	BIE 1985, 27–9
1983	8.95	BIE 1985, 27–9
1984	9.14[a]	BIE 1985, 27–9

a. Preliminary estimate.

Industry profits

Figures on profits are not available.

Industry capacity utilization

Figures on capacity utilization are not available.

Quantitative Profile

Item	*Amount*	*Source*
Number of years restraints in force (1891 to present)	94 years	
Induced increase in price of imported goods	31.2 to 42.4 percent 40 percent	Morici, 28[a] authors' estimate[a]
Induced increase in price of domestic goods	12 percent	authors' estimate
Coefficient of price response	0.3	authors' estimate
Quantity and value of imports (1984)	480 million units $481 million	BC, FT 246 BC, FT 246
Induced decrease in imports due to restraints	420 million units $421 million	authors' estimate authors' estimate
Quantity and value of domestic production (1984)	2,827 million units $2,845 million	Dessauer, 137 BIE 1985, 27–9
Induced increase in domestic production due to restraints	2 to 10 percent (by value) 30 to 45 percent (by volume) 10 to 19 percent (by value) 15 percent (by volume) 420 million units	USITC 1402, 93[b] CRS, 142[c] CRS, 159 authors' estimate authors' estimate
Coefficient of quantity response	1.0	authors' estimate
Elasticity of demand for imports	1.46 to 3.00 1.4	Stern, 9[d] Morici, 15
Elasticity of supply of domestic goods	2.0	authors' estimate
Elasticity of demand for domestic goods	0.3	authors' estimate
Cross-elasticity of demand for domestic goods relative to price of imported goods	2.72 to 3.01 0.7	Stern, 9[d] authors' estimate
Cross-elasticity of output of domestic goods relative to price of imported goods	0.6	authors' estimate
Cross-elasticity of quantity of imported goods relative to price of domestic goods	5.0	authors' estimate
Cost of restraints to US consumers (1984)	$500 million	authors' estimate
Gain from restraints to US producers (1984)	$305 million	authors' estimate
Tariff revenue and implied average tariff rate	none	Morici, 28

Quantitative Profile *(continued)*

Item	*Amount*	*Source*
Gain from restraints to foreigners	negligible	authors' estimate[e]
Efficiency loss from larger domestic production to the United States (1984)	$29 million	authors' estimate
Welfare cost of restraints to the United States (1984)	$29 million	authors' estimate
Employment in protected US industry	37,100 (1979) 33,000 (1984)	BIE 1983, 7–9 BIE 1985, 27–9
Induced increase in employment	730 to 3,530 14,000 to 21,000 5,000 (1984)	USITC 1402, 99 CRS, 170[f] authors' estimate
Cost of restraints to US consumers per job saved (1984)	$100,000	authors' estimate
Gain from restraints to US producers per job (1984)	$9,000	authors' estimate

a. Morici's and Megna's estimate reflects the tariff equivalent of the manufacturing clause, and is based on the Congressional Research Service's (CRS) estimate that imports would rise in the long run, by 10 percent to 19 percent of the value of US producers' shipments. Our estimate, likewise, is based not on current imports but on the estimated increase in imports after termination of the clause.

b. This estimate reflects the number of books currently manufactured domestically that would be printed overseas if the clause were terminated.

c. The Book Manufacturing Institute provided this estimate to the CRS.

d. This elasticity is for the printing and publishing industry as a whole.

e. We estimate negligible gains to importers, since one category of books is banned entirely, while all others are permitted to enter freely.

f. This figure reflects the Book Manufacturing Institute's estimate of employment loss in the book printing and publishing industries should the clause be terminated.

Hypothetical Adjustment Program

	1984	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
US purchases of books (million units)							
Assumed annual consumption growth of 4 percent	2,466	2,565	2,667	2,774	2,885	3,000	3,120
Imports from all sources							
Assumed annual consumption growth of 4 percent and no change in import restraints (million units)	480	513	533	554	577	600	624

Hypothetical Adjustment Program *(continued)*

	1984	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
Assumed annual consumption growth of 4 percent and liberalized protection (million units)	**480**	**564**	**640**	**721**	**808**	**900**	**998**
Import share of consumption with degressive protection (percentage)	**20**	**22**	**24**	**26**	**28**	**30**	**32**
Hypothetical quota auction rate							
Quota auction rate liberalized by 3 percentage points per year[a] (percent)	**40**	**37**	**34**	**31**	**28**	**25**	**22**
Quota auction revenue (million 1984 dollars)[a]	**—**	**19**	**36**	**52**	**65**	**75**	**82**
US production for the domestic market (million units)							
Assumed annual consumption growth of 4 percent and constant import share	**1,986**	**2,052**	**2,134**	**2,220**	**2,308**	**2,400**	**2,496**
Assumed annual consumption growth of 4 percent and rising import share	**1,986**	**2,001**	**2,027**	**2,053**	**2,077**	**2,100**	**2,122**
US employment in domestic book manufacturing (thousand workers)							
Assumed 8 percent annual productivity growth and constant import share	**33**	**32**	**31**	**30**	**29**	**28**	**27**
Assumed 8 percent annual productivity growth and rising import share	**33**	**31**	**29**	**27**	**25**	**24**	**22**
Year-to-year employment changes (thousand workers)							
Changes induced by consumption and productivity growth with constant import share	**—**	**−1**	**−1**	**−1**	**−1**	**−1**	**−1**

Hypothetical Adjustment Program *(continued)*

	1984	*1985*	*1986*	*1987*	*1988*	*1989*	*1990*
Changes induced by rising import share	—	-1	-1	-1	-1	—	-1
Total employment changes	—	-2	-2	-2	-2	-1	-2
Benefit and budget calculations (1984 prices)							
Annual wage cost per worker assuming constant $10 per hour and 2,400 hours (dollars)	24,000	24,000	24,000	24,000	24,000	24,000	24,000
Benefits calculated at two times annual wage cost per worker (million dollars)	—	96	96	96	96	48	96
Projected program surplus or deficit: tariff revenue less benefits (million dollars)	—	-77	-60	-44	-31	27	-14

— Not applicable.

a. These estimates assume a domestic supply elasticity of 2.0 and a domestic demand elasticity of 0.3. The quota auction would apply only to new exports of books previously excluded by the clause. Thus, the quota auction revenue is based on the difference between imports with no change in restraints and imports under liberalization.

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Mr. **Wilbourn**. I would like to comment about the Department of Labor study, which is cited in this hearing, which says that somewhere over 100,000 jobs would be lost in the printing industry. I think that that is unrealistic. I would like to point out that the results of that study were not released or sanctioned by the Department of Labor. The Department determined before the study's release that it was inaccurate. Rather the study was leaked. It was not an official publication of the Department of Labor.

The **Chairman**. Thank you. You are going to have to forgive me. I am going to run down to the White House, and I am going to leave Senator Long momentarily here and Senator Durenberger. Gentlemen, thank you. Senator Durenberger.

Senator **Durenberger**. Mr. Henriques, do you have a comment?

Mr. **Henriques**. I was going to make a comment about the possible job loss relative to the production of manuals in our industry. We produce these overseas now. The effect of producing them there, though, has been to abandon copyright on the material that is there. And so, we have exposed ourselves to the real possibility of piracy in our own country for these products that accompany the manuals.

And in that regard, I would like to present to the committee for the record a letter from a coalition of various industries for the expiration of the manufacturing clause. It has over 50 signers, and for the record, I would like to furnish that.

Senator **Durenberger**. Is there objection?

[No response.]

Without objection.

[The prepared letter from the Coalition for the Expiration of the Manufacturing Clause follows:]

COALITION FOR THE EXPIRATION OF THE MANUFACTURING CLAUSE
311 FIRST STREET, N.W. - SUITE 500
WASHINGTON, D.C. 20001
(202) 737-8888

June 10, 1986

The Honorable Bob Packwood
Chairman, Senate Finance Committee
SR-259 Russell Senate Office Building
Washington DC 20510

Dear Senator Packwood:

We urge you to oppose S.1822/H.R.4696, legislation that would extend the Manufacturing Clause of the U.S. Copyright Law. The present clause prohibits imports of non-dramatic copyrighted works by American authors not printed or bound in the United States or Canada. It denies copyright protection to certain American authors whose works are printed beyond U.S. and Canadian boundaries.

Enactment of legislation to extend the Manufacturing Clause in any form -- even including so-called "compromise certification" formulas -- would severely set back efforts to protect U.S. intellectual property rights, efforts that are critical to preserve and enhance U.S. competitiveness. It would also result in retaliation against a broad range of U.S. exports.

The manufacturing clause impedes U.S. adherence to the Berne Copyright Convention and thus stands in the way of efforts to protect books, music, movies, computer software, and semiconductor chip design. It puts U.S. copyright owners at risk by weakening standards for intellectual property rights protection. It undermines U.S. credibility in efforts to make protection of intellectual property rights a top priority for multilateral trade negotiations that will begin in September.

The clause is undeniably protectionist. It raises consumer prices. It seeks to preserve a small number of jobs at the expense of workers in export industries.

The clause has been ruled a violation of U.S. international obligations by the GATT Council, thus clearing the way for retaliation against U.S. exports should Congress extend it. The European Community has notified the United States of its intent to retaliate by restricting imports of United States paper, tobacco, machinery for the paper, printing, tobacco, and textile industries, and chemicals in an amount **between $300 million and $500 million.** It would be wrong for Congress to take away the jobs of Americans in these exporting industries.

The United States is the world's leading exporter of printed products. Our printing industry is technologically sophisticated. It is a growth industry. Studies by the Congressional Research Service

(1981), the U.S. International Trade Commission (1983) and the U.S. Department of Labor (1986) all conclude that job losses would be minimal, if there were any at all, should the clause be allowed to expire. Studies also show the industry's annual employment growth will exceed any job losses.

U.S. industries cannot compete successfully without better protection for their intellectual property rights. The U.S. economy cannot grow vigorously if Congress sacrifices the success of competitive exporters.

A vote against extending the Manufacturing Clause in any form is a vote for a more dynamic, more competitive U.S. economy. Please cast your vote against this ill-advised legislation.

American Association of Exporters & Importers
California Council for International Trade
Emergency Committee for American Trade (ECAT)
International Anticounterfeiting Coalition, Inc.
National Foreign Trade Council
U.S. Chamber of Commerce
U.S. Council for International Business
American Library Association
Association of American University Presses
Authors League of America, Inc.
Intellectual Property Committee
Intellectual Property Owners, Inc.
Citizens for a Sound Economy
Consumers for World Trade
American Film Marketing Association
CBS Inc.
Time, Inc.
Motion Picture Association of America, Inc. (MPAA)
Motion Picture Export Association of America, Inc.
Recording Industry Association of America
ADAPSO
American Electronics Association (AEA)
Computer and Business Equipment Manufacturers Association (CBEMA)
Computer and Communicatiions Industry Association (CCIA)
Electronic Industries Association (EIA)
Information Industry Association (IIA)
National Electrical Manufacturers Association (NEMA)
Semiconductor Industry Association (SIA)
Texas Computer Industry Council
AT&T
3M
Apple Computer
AST Research, Inc.
Burroughs Corporation
Honeywell, Inc.
IBM Corporation

Intel Corporation
NCR Corporation
Prime Computer
Texas Instruments Incorporated
Xerox Corporation
Leaf Tobacco Exporters Association
R. J. Reynolds Nabisco, Inc.
Tobacco Association of U.S.
American Paper Institute
MacMillan Bloedel, Inc.
National Forest Products Association
Pulp and Paper Machinery Manufacturers Association
Union Camp Corporation
Air Products & Chemicals, Inc.
Monsanto Co.
Pharmaceutical Manufacturers Association
Pfizer, Inc.
Weyerhaeuser Company

Senator **Durenberger**. Mr. Wilbourn.

Mr. **Wilbourn**. Yes; I would like to elaborate on the question that was asked a little bit earlier. In the study done by the Institute for International Economics, it was determined that the efficiency loss caused by the manufacturing clause was relatively small, $29 million. The cost of increased prices for printed materials is $500 million. What that tells us is that there is a large transfer—a wealth transfer—from purchasers of printed material to printers. While it may be true that income per job may decrease, absolute job displacement is a separate issue and in this case will be small.

Generally speaking, the U.S. printing industry is technologically sophisticated, much more so than foreign printing industries. The difference is labor costs. I believe this point has been brought up before. And so, in printing jobs that are labor intensive—foreign countries may have a competitive advantage; but generally speaking, even without the manufacturing clause, the United States printing industry will be able to compete profitably because of its technological sophistication.

There might be a decrease in income per printing job, but this only represents and adjustment to true market values. The important point is job displaclement will be small.

Senator **Durenberger**. Mr. Norton.

Mr. **Norton**. Mr. Chairman, there is an old axiom: If something is broken, there is no reason to fix it. There was some previous testimony given today, I think by the Commerce Department, that suggested that the printing industry has a unique position and an enviable position in terms of technological improvements and a technological position in the industry throughout the world. Notwithstanding that position that it has, it also referred to the moderate growth in the industry of approximately 13,000 jobs a year.

That is occurring under the current manufacturing clause. The extension that is being proposed is a phaseout of the clause. I would appreciate it if some rethinking was done by those who view it strictly as a tariff or trade barrier.

The chairman, before he exited, made a comment about the reaction of the paper industry to the extension of the manufacturing clause. I would simply like to share with the committee that the UPIU—the United Paper Workers International Union—supports the position that we have for the extension of the manufacturing clause.

Mr. **Prine**. Senator.

Senator **Durenberger**. Mr. Prine.

Mr. **Prine**. Could I make a comment here? I am not saying that the job loss thing is not relevant, but the key point that I want to establish is that we are not basing—at least, we in the printing industry whom I represent—are not basing our case on this. What we want is equal access. We are perfectly willing to sail on international trade waters, but we want access to these foreign markets. And looking back over the last 10 years, I cannot name or think of one case in which our Government has succeeded in lowering a foreign trade barrier of any significance or getting rid of it.

And this approach of unilateral trade disarmament that we have followed has been an absolute disaster. And what we are being asked to do today is to surrender the last bargaining chip and hope that this course of unilateral trade disarmament will suddenly work; and I submit that history proves that it will not work. The efforts of our Government have been a total failure in this regard, and we are facing these terrible trade barriers abroad. That, to me, is the key to what we are trying to do. If we can get free trade, that is fine.

Senator **Durenberger**. Mr. Karp.

Mr. **Karp**. Thank you, Senator. I would like to point out first of all that in all of this talk about retaliation, there has been no mention on the other side that we are the only country, with the exception of the Philippines, that has a manufacturing clause. There is no retaliation or denial of access in any other country through the mechanism of a manufacturing clause. What the proponents should be doing is coming before you with a bill that has nothing to do with copyright, nothing to do with authors, seeking redress on a trade basis. And as Government witnesses have pointed out, there are many opportunities to do that; but the point should not be forgotten that the only target of this clause are American authors and that no other country does this and that other countries can do it in the future. If we continue our clause, we will see other manufacturing clauses. Our printers' access abroad will be reduced.

This is not a job loss issue because their bill is based on the premise, which may never be carried out, that we can certify every country in the world to print and export to the United States, which would bring us right back to whatever job loss figure we have today or even increase it.

Lastly, as far as the Berne Convention is concerned, every expert on Berne and international copyright law agrees that this bill is not compatible with Berne. Mr. Bosch is a good-natured ambassador for Berne who has testified before the Senator Judiciary Committee, seeing no impediment anywhere in our Copyright Act, although the Copyright Office and every other study has found several areas of inconsistency which would have to be remedied, and one of the primary areas is the present manufacturing clause and the new one. Thank you.

Mr. **Prine**. Could I reply to that?

Senator **Durenberger**. Very briefly.

Mr. **Prine**. I will make it brief. [Laughter.]

There has been a point made that other countries don't have manufacturing clauses. We don't have laws that stop magazines at the border, that apply discriminatory mail rates, that penalize our advertisers on their tax codes. We don't have 25 and 30 percent tariffs. So, this really is the only thing we have to use in dealing in these matters.

Senator **Durenberger**. All right. Senator Long, do you have any questions?

Senator **Long**. No questions, Mr. Chairman.

Senator **Durenberger**. Gentlemen, we thank you all very much. We appreciate everyone's being here today. The hearing is adjourned.

[Whereupon, at 10:51 a.m., the hearing was adjourned.]

[By direction of the chairman the following communications were made a part of the hearing record:]

FROM: SOL MOSHER, USTR

A22 THE NEW YORK TIMES, MONDAY, JUNE 9, 1986

The New York Times

Founded in 1851

ADOLPH S. OCHS, Publisher 1896-1935
ARTHUR HAYS SULZBERGER, Publisher 1935-1961
ORVIL E. DRYFOOS, Publisher 1961-1963

ARTHUR OCHS SULZBERGER, Publisher

A. M. ROSENTHAL, Executive Editor
SEYMOUR TOPPING, Managing Editor
ARTHUR GELB, Deputy Managing Editor
JAMES L. GREENFIELD, Assistant Managing Editor

MAX FRANKEL, Editorial Page Editor
JACK ROSENTHAL, Deputy Editorial Page Editor

JOHN D. POMFRET, Exec. V.P., General Manager
LANCE R. PRIMIS, Sr. V.P., Asst. General Manager
RUSSELL T. LEWIS, Sr. V.P., Circulation
J. A. RIGGS JR., Sr. V.P., Operations
HOWARD BISHOW, V.P., Employee Relations
ERICH G. LINKER JR., V.P., Advertising
JOHN M. O'BRIEN, V.P., Controller
ELISE J. ROSS, V.P., Systems

Why Gamble on Making Books?

If John Le Carré's American publisher were to print copies of "The Perfect Spy" in Britain for sale in America, Mr. Le Carré would be protected by his American copyright. But if David Stockman's American publisher imported foreign-printed copies of his best seller, anyone would be free to steal the words. What's the difference? Citizenship. Copyrights are void for works written by Americans but printed abroad.

This so-called manufacturing clause of the copyright law protects foreigners more than Americans. Worse, it is blatantly protectionist, raising costs to consumers. The clause is frequently used by other governments to justify failing to crack down on the theft of intellectual property like computer software. Still worse, the manufacturing clause violates American treaty obligations. Unless Congress lets it expire next month, the European Common Market plans to retaliate against American exporters of paper, machinery and tobacco.

The clause prohibiting imports of copyrighted material by American authors dates to 1891, when industrialists had convinced Congress that America needed to become self-sufficient in manufacturing. It was weakened when copyright law was modernized a decade ago, and the clause expires July 1 unless Congress renews it.

The politics of the issue used to be one-sided. In 1982, the Reagan Administration tried to bury the manufacturing clause but was readily defeated. Congress was moved by industry fears that book printing would move to countries with cheaper labor. The basis for this fear has eroded, as automation reduced the labor component in printing. In 1983, the U.S. International Trade Commission, an independent Government agency, concluded that employment gains in the efficient parts of the printing industry would quickly make up for the small number of jobs likely to be lost in books.

But when the manufacturing clause comes up for renewal on July 1, Senator Strom Thurmond proposes making the manufacturing clause permanent. His corporate constituents include R. R. Donnelly, the huge printing concern. It long appeared that the general frustration with the trade deficit would make the Thurmond bill veto-proof.

Now the politics have become more interesting. Two years ago, an international panel declared that the manufacturing clause violates America's obligations under the General Agreement on Tariffs and Trade. This finding gives Europe the right to retaliate. The Community now says it will restrict imports of $300 million to $500 million worth of American paper, machinery, tobacco and chemicals. Not surprisingly, that threat has created the first private counterweight to printing interests.

The Administration is eager for Congress to clean up American trade practices so we can press foreign governments to clean up theirs. Our failure to heed the GATT decision on printing makes it difficult to persuade others to abide by GATT judgments that serve American interests. Those are national interests; they deserve to take precedence over the fears of a few book printers.

Statement of the
American Library Association
to the
Senate Committee on Finance
on
S. 1822 and S. 1938
on the
Manufacturing Clause of the Copyright Law

June 10, 1986

The American Library Association strongly opposes S. 1822, a bill which would extend the manufacturing clause of the copyright law so as to apply to all printed material and to make it permanent. ALA also opposes S. 1938, which would extend the present limited manufacturing clause into the indefinite future. At present the clause, which is due to expire on July 1, 1986, applies only in essence to books by American authors, who lose their U.S. copyright protection and may have their books barred from the United States if they are printed abroad, a very serious penalty which few authors or their publishers will risk. The clause now protects a small fraction of the $3 billion annual production of books in the United States from foreign printing competition, whereas S. 1822 would extend this protection to the $35 billion annual U.S. production of all printed products.

The ALA believes that Congress should not extend the manufacturing clause. There is no economic justification for either aspect of S. 1822; making the clause permanent or extending its scope. In the calendar year 1985, the Department of Commerce reports that the United States enjoys a favorable balance of trade both for books and for all printed matter, as follows:

	Exports	Imports
Books	$600 million	$560 million
All printed matter	$1.3 billion	$1.2 billion

This was a year in which the dollar on average was at an all time high in relation to other currencies, hampering exports and encouraging imports. The dollar has since come down significantly and the Administration has wide support for encouraging further reduction.

It is true that S. 1822 proposes an "escape hatch" from the manufacturing clause, eliminating its application to printed material from countries certified by the U.S. Trade Representative as providing adequate and effective means under their laws for all foreign (not only U.S.) nationals to secure, exercise and enforce exclusive rights to copyrights and impose no tariff or nontariff barriers to trade in printed products. The countries which might qualify for the exemption are not low wage countries or pirates of copyrighted materials.

Why is the American Library Association interested in this question? One answer is history---we have opposed the manufacturing clause, unique to the United States, for decades. More important at this time are the price increases on certain limited kinds of books, such as illustrated children's books, which would result from giving U.S. producers a monopoly position, and the reduction of the availability of books to library users and all book purchasers. The Association, with its more than 42,000 members in all types of libraries---public, school, higher education, business and specialized---represents the consumers of books counted in the tens of millions of library patrons as well as many more millions of readers.

We urge Congress to let the manufacturing clause expire.

STATEMENT OF THE AMERICAN PAPER INSTITUTE ON S. 1822

LEGISLATION TO EXTEND THE MANUFACTURING CLAUSE BEFORE THE

U.S. SENATE COMMITTEE ON FINANCE

The American Paper Institute (API) is the national trade association representing U.S. companies that account for over 90% of the U.S. production capacity of pulp, paper and paperboard. In 1985, shipments of the paper and allied products industry accounted for nearly $98 billion. The industry operates in every state of the union and employs over 680,000 people.

We are opposed to S. 1822. This bill would extend the so-called "Manufacturing Clause" of the Copyright Act beyond its scheduled June 30 expiration date. Enactment of this provision, which in effect bans the importation of U.S. copyrighted literary material not printed in the U.S. or Canada, will result in retaliatory action by our trading partners. This will produce a net negative effect on our industry's trading situation.

In 1984, the General Agreement on Tariffs and Trade (GATT) found the "Manufacturing Clause" in violation of the United States' international obligations, but retaliation by GATT members was withheld pending the Clause's expiration this June. The U.S. Government accepted the findings of the GATT Council. Since the U.S. Government has consistently stressed the need to strengthen the GATT's dispute settlement mechanism, this puts an additional responsibility on the U.S. to conform to the GATT Council's decisions.

On March 12 of this year, the EC requested the GATT's permission to retaliate against U.S. exports in the event the Manufacturing Clause was extended in any form. Further, on April 30, the British Secretary of State for Trade and Industry, in a statement during his visit to Washington, specifically addressed the provisions of S. 1822 when he reconfirmed the EC's intention to retaliate against U.S. products should the Clause be extended.

Kraft linerboard, the material for corrugated boxes and our industry's key export product to the EC, is on the top of the Community's retaliation list, which also includes tobacco and tobacco products, chemicals and machinery used in the printing, textile, paper and tobacco industries. The level of retaliation, as indicated by the EC, approaches $500 million per year and according to some government sources, could be even higher.

U.S. kraft linerboard exports to the EC exceeded $200 million in 1984 but slumped to $122 million in 1985 because of the impact of the high value of the U.S. dollar versus other currencies. EC retaliation at this time would have a most damaging impact on our industry which is just beginning to respond positively to the more favorable dollar exchange rate and regain some of our lost markets.

What is also of concern to the U.S. paper industry, is the possibility of retaliation by other GATT members. Furthermore, and equally important, if normally exported tonnage cannot find a foreign market, it would back up onto our domestic market resulting in adverse impact on jobs and investment.

The loss of kraft linerboard and possibly other paper industry exports would be a severe blow not only to the health of the U.S. paper industry, but also to the nation's effort in reducing the trade deficit through the expansion of U.S. exports. At a time when many U.S. manufacturing industries are facing severe competition from foreign producers, the U.S. paper industry has worked hard to enhance its fundamental competitive strengths. The U.S. industry has invested billions of dollars to conserve and improve energy efficiency, has introduced new production technologies and has built modern world-class production facilities. Significantly, the high level of investment was maintained even during the last recession. Given these facts, and under normal exchange rate conditions, the U.S. paper industry would be in a position to expand exports.

While opposing extension of the "Manufacturing Clause", the U.S. paper industry is sensitive to the economic concerns of the U.S. printers and others supporting the Clause's extension. However, we feel that the solution to these concerns should not be another protectionist barrier, and in this particular case, not one that has already been found to be in violation of GATT rules. The printers have told us that their only reason for seeking extension of the Clause is their desire to surmount trade barriers that they face in other countries. API vigorously supports opening of the foreign markets to U.S. exports, in general, and for printed matter in particular. We also recognize that action is needed regarding the problem of pirating by other countries of material copyrighted in the United States. Thus, we fully support the printers in their market opening goals and copyright problems. We believe, though, that there are other tools available now that would be fully GATT-legal and, thus, would avoid retaliation against our and other industries' exports.

In addition to our concern over retaliation, extension of the "Manufacturing Clause" would undermine the U.S. position in the upcoming round of multilateral trade negotiations which the U.S. industry considers important in reducing foreign trade barriers to U.S. exports. The Administration's pursuit of Section 301 cases against countries violating U.S. intellectual property rights would also be significantly weakened if the Clause does not expire.

In conclusion, we urge opposition to passage of S. 1822.

STATEMENT
on
S. 1822
before the
SENATE COMMITTEE ON FINANCE
for the
U.S. CHAMBER OF COMMERCE
by
WILLIAM T. ARCHEY *
June 10, 1986

The U.S. Chamber of Commerce strongly opposes legislation that would extend the manufacturing clause of U.S. copyright law beyond June 30 of this year. The present clause prohibits imports of non-dramatic copyrighted works by American authors not printed or bound in the United States or Canada. It also denies copyright protection to American authors whose works are printed overseas and imported into the United States. Such legislation is a unilateral protectionist measure, which would harm U.S. interests, hamper efforts to achieve greater fairness in international trade, and impede progress towards strengthening protection for the intellectual property rights of U.S. companies. The Chamber bases its position on the following factors:

1. Substantial job losses could result from the retaliation that extension of the manufacturing clause would provoke by our trading partners. The net impact on U.S. employment must be determined by weighing these job losses against the relatively small number of printing industry jobs that the manufacturing clause would protect. Because the manufacturing clause violates U.S. obligations under the General Agreement on Tariffs and Trade (GATT), U.S. trading partners have the right to retaliate against U.S. exports. The European Community has already announced plans to impose restrictions on several hundred million dollars of U.S. exports if the manufacturing clause is not allowed to expire on July 1. U.S. industries at risk include paper, tobacco, textiles and chemicals.

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* Vice President, International, U.S. Chamber of Commerce

2. By perpetuating a GATT illegal trade barrier, the manufacturing clause hampers U.S. efforts to fight unfair and discriminatory trade practices overseas. The manufacturing clause is the very type of unfair trade barrier that the Administration and Congress would attack under Section 301 of the Trade Act of 1974, if maintained by one of the U.S.'s trading partners. Last fall, the President accelerated U.S. efforts to address foreign unfair trade practices, with the initiation of a number of Section 301 cases. In some cases, the U.S. has retaliated when its trading partners failed to trade according to principles and obligations of fairness. U.S. credibility and, thus, the ability to negotiate from a position of strength are weakened seriously by the manufacturing clause. Its extension would undermine U.S. efforts to eliminate unfair practices abroad, which damage American industries and workers.

3. The manufacturing clause undermines efforts to achieve higher national standards and stricter enforcement in countries where intellectual property rights are abused. The Administration and a strong majority in the Congress agree that the U.S. work strenuously to safeguard its creative work (books, records, films, and computer software) abroad. Yet the manufacturing clause is an obstacle to better protection of U.S. intellectual property rights abroad. It impairs the U.S.'s ability to press for better national laws to protect copyrights abroad. In fact, one foreign country (Singapore), which is improving its laws protecting copyrights, is threatening not to apply its improved protection to U.S. books, records, films, and computer software in retaliation against the U.S. manufacturing clause.

4. The manufacturing clause is a GATT illegal trade practice that undercuts U.S. efforts to strengthen multilateral cooperation in the GATT. The Administration and Congress generally agree that we need to strengthen the ability of the GATT to enforce its rules governing trade. Specifically, the U.S. seeks to strengthen the ability of GATT to settle trade disputes and favors extending the GATT to the

protection of intellectual property rights. The manufacturing clause was found to be in violation of GATT through established procedures two years ago. The U.S. cannot ask others to abide by the rules if it does not obey them itself.

5. Harm to U.S. interests would result from continuation of the manufacturing clause even if certification procedures were established under which qualifying countries would be declared exempt. Supporters of S. 1822 maintain that the bill meets the concerns of those who oppose a simple extension of the manufacturing clause by providing (effective July 1, 1988) that waivers could be granted to imports from countries that meet certain requirements as certified by the U.S. Trade Representative (USTR) and the Secretary of Labor. However, in the Chamber's view this is incorrect because the certification procedures contained in S. 1822 have several major deficiencies:

   o To obtain a waiver, the USTR must certify that the country has no material tariff or nontariff barriers to U.S. printed products. This inappropriately incorporates trade provisions into U.S. copyright law. In addition, the Secretary of Labor must certify that the country in question has extended internationally recognized worker rights. U.S. copyright law is not the appropriate tool for achieving improved international labor standards.

   o The uncertainty about which countries will qualify for waivers under the certification requirements would have a disruptive effect on commercial relations.

   o Retaliation threatened by the European Community in the event of a simple extension of the manufacturing clause is unlikely to be averted by the certification provisions, particularly because waivers would not take effect before July 1, 1988.

CWT
CONSUMERS FOR
WORLD TRADE
[illegible] Connecticut Avenue, N.W.
Suite [illegible]
Washington, D.C. [illegible]
[illegible]

June 10, 1986

STATEMENT ON THE TERMINATION OF THE MANUFACTURING CLAUSE OF THE COPYRIGHT ACT TO THE SENATE FINANCE COMMITTEE

Consumers for World Trade (CWT) is a national, non-profit membership organization established in 1978. CWT supports expanded foreign trade to help promote healthy economic growth; provide choices in the marketplace for consumers; and counteract inflationary price increases. CWT believes in the importance of increasing productivity through the efficient utilization of human and capital resources. CWT conducts its educational programs to keep American consumers informed of their stake in international trade policy and speaks out for the interests of consumers when trade policy is being formulated.

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JOAN R. BRADEN
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TIMOTHY L. ELDER
Washington Manager of Governmental Affairs, Caterpillar Tractor Company
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Johns Hopkins University School of Advanced International Studies
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Vice Chairman, Committee of 100 on the Federal City
HENDRIK S. HOUTHAKKER
Professor of Economics, Harvard University
A. W. JESSUP
Washington Representative, U.S. Council for International Business
FRED J. MARTIN, JR.
Vice President, Washington Representative, Bank of America
ROBERT S. McNAMARA
Former President, The World Bank
GERALD O'BRIEN
Executive Vice President, American Importers Association (retired)
WILLIAM MATSON ROTH
President, Roth Properties
SEYMOUR J. RUBIN
Executive Vice President, American Society of International Law
PHILIP H. TREZISE
Senior Fellow, Brookings Institution
Executive Director
JANE E. DOCKERY

Consumers for World Trade (CWT) believes that the Manufacturing Clause of the Copyright Act, section 601 of Title 17, United States Code, should be allowed to expire on June 30, 1986 and should neither be expanded nor brought back in any form.

The Manufacturing Clause confers special protection on United States book manufacturers at an unjustifiable cost to consumers. In a 1986 study by the Institute for International Economics, the authors conclude that the cost to consumers of maintaining the Manufacturing Clause in 1984 came to $500 million overall; $100,000 were spent for every production job saved. On the other hand, the gain to producers from the trade restraint imposed by the clause was $305 million or $9,000 for every worker employed in the book manufacturing industry. The net effect represents an off-budget transfer from consumer to producer and makes little economic sense. Consumers are presently paying over $55 billion annually for all trade limiting measures.

Continuation of the Manufacturing Clause as proposed in S 1822 would carry the added disadvantage of provoking retaliation against U.S. paper, tobacco and printing industries by the European Community in an amount estimated at between $300 and $500 million, adding to the burden already borne by the consumer and endangering U.S. export markets.

Furthermore, continuing the Manufacturing Clause would undercut the United States' own agenda for inclusion of intellectual property rights in a new GATT round, and for strengthening the GATT dispute settlement mechanism. A GATT panel ruled on behalf of the European Community's objection against the

Manufacturing Clause in 1984. The Europeans have refrained from taking action pending the mandated termination date of the clause. Our negotiating posture on behalf of a strengthened multilateral trading system will be severely undermined if we are seen to violate GATT procedures and rulings on the one hand while demanding that they be strengthened on the other.

S1822 requires that a determination be unilaterally made by the USTR that countries meeting certain criteria could be certified exempt from the clause. This tactic also weakens attempts to shore up the multilateral system. It is this system which, if allowed to operate, will continue to maintain affordable consumer prices in America.

On June 6 the Canadians imposed a tariff on selected U.S. products in retaliation for the U.S. decision to place a 35 percent tariff on Canadian shakes and shingles. Among the products chosen are certain U.S. books and periodicals which had been coming into Canada tariff-free. Now a ten percent tariff will apply to printed music, some maps, charts and pamphlets and novels not used as classroom textbooks.

In a statement May 22 before the House Judiciary Subcommittee on Courts, the Printing Industries of America, Inc. state that "there has been only one significant improvement in our ability to trade goods with other countries. That improvement is the zero rating of the tariff on books and periodicals into Canada. That was accomplished by the U.S. and Canadian printing industry by virtue of negotiation over the Manufacturing Clause." The industry further goes on to say that it is tired of being part of a "global swap system" where concessions are not made on a tit for tat, sectoral basis.

Cross-sectoral retaliation, however, is the unintended and unfortunate consequence of the unilateral imposition of trade-restrictive measures of which the Manufacturing Clause is a classic example.

The threat to invoke the Manufacturing Clause as envisioned by the proposed legislation is like a double edged sword: it is a threat against America's trading partners, and it is equally a threat to America's consumers.

THE DOMINION PRESS-HEDGES & BELL
QUALITY BOOK PRINTING SINCE 1925

CECIL H. CARSON JR.
VICE PRESIDENT
MARKETING AND SALES
WESTERN REGION

SUITE 109-371
15466 LOS GATOS BLVD.
LOS GATOS, CA 95030
(408) 358-2332
TELEX 287561

June 4, 1986

Ms. Betty Scott-Boom
Committee on Finance
Washington, DC 20510

Re: Finance Committee Hearing, Scheduled for June 10, 1986;
Extension of the Manufacture's Clause (S.1822).

Dear Ms. Scott-Boom:

The Dominion Press-Hedges & Bell has participated in the international book printing community for over 60 years. We have two book printing plants in Australia and are part of a well known and growing Australian corporation.

The principal market area for our company is within the Pacific Basin but, following our current business plan, we wish to expand our inter- national trade to include the United States Market. My position as Vice President of Marketing and Sales for the company is to present our book manufacturing capabilities to the U.S. Market to offer a competitive choice of printing books in Australia.

With this letter, I wish to formally register support for the minority views set forth in the Report of the Committee On The Judiciary, United States Senate. Specifically, the Manufacturing Clause does not belong in the Copyright Laws and the current Manufacturing Clause due to expire June 30, 1986, should do so as scheduled and should not be extended.

Kind regards.

Sincerely Yours,

CECIL H. CARSON, JR.
Vice President, Marketing &
Sales, Western Region

CHC:ew

U.S. Council for an Open World Economy
INCORPORATED
7216 Stafford Road, Alexandria, Virginia 22307
(703) 765-2472

Statement submitted by David J. Steinberg, President, U.S. Council for an Open World Economy, to the Senate Committee on Finance in hearings on S.1822, a bill to extend and amend the manufacturing clause of the copyright law. June 10, 1986

(The U.S. Council for an Open World Economy is a private, non-profit organization engaged in research and public education on the merits and problems of developing an open international economic system in the overall national interest. The Council does not act on behalf of any "special interest".)

This statement is in opposition to any extension of the manufacturing clause of the copyright law. It especially opposes amplification of the manufacturing clause, and rejects as unrealistic the proposition that, by using it to induce foreign concessions in return for exemptions from this U.S. statute, the stricture can be an instrument for free trade. Other, more constructive and more productive routes need to be found for securing equity for U.S. interests at home and abroad.

Enacted in 1891, and liberalized several times over the past 95 years, the manufacturing clause requires that, as a condition for full U.S. copyright protection, "preponderantly nondramatic" literary works in the English language by a U.S. author (or a foreign author domiciled in the United States) must be printed in the United States or Canada. Some of the exceptions are works by U.S. nationals domiciled abroad for at least one year, 2,000 copies of a work, copies for governmental use (other than schools), and copies for the libraries of nonprofit educational organizations. We understand that books (as against non-book commercial items) are the only printed matter for which the manufacturing clause has much significance. Jobs likely to be protected by the manufacturing clause (the estimates are of some controversy) are far exceeded by the number of U.S. jobs that would be at risk if foreign governments retaliated against U.S. exports for U.S. failure to terminate this trade restriction.

The manufacturing clause is more than a barrier to commerce. Constituting a simplistic response to fears of foreign competition, it tends to divert attention from direct, constructive action on the real problems and needs of the industry for whose benefit this aged, jaded protectionism has been kept on the statute books; it is thus a barrier to more-enlightened concern with the industry's real problems and evolving needs. It is also a barrier to authors unable to make suitable arrangements with publishers and printers in the United States or Canada and not wanting to lose their copyright protection by getting these works (if covered by the manufacturing clause) published elsewhere. It is also a barrier to American publishers eager for maximum flexibility with which to increase efficiency and make the most of market opportunities. Barriers that impede authors and publishers serve ultimately to disadvantage consumers of the printed word and in some measure retard cultural and educational advancement.

Whether or not justifiable as economic policy, import restriction for the printing industry does not belong in the copyright law. No similar condition concerning U.S. manufacture is attached to U.S. patent law. To the extent that trade-restrictive protection against foreign competition has economic justification, it should be only a marginal, transitional component of a coherent, comprehensive, constructive industry-adjustment strategy based on a careful diagnosis of the problems and needs of an industry that requires and deserves government help. Import-restrictive assistance of any kind should be the subject of a proceeding under the import-relief provisions of the trade legislation. Neither approach has ever been followed with respect to the U.S. printing industry. It is not clear that the industry's current state of development owes much if anything to the existence of the manufacturing clause for so many years. The industry's future health surely depends on much more than such an anachronism, whose overall costs certainly outweigh any benefits.

Objection to repeal of the manufacturing clause on grounds of substantially lower wages outside the United States and Canada reveals the narrowest perception of international competitive advantages and disadvantages. It overlooks the vital factor of preeminent U.S. productivity in book manufacturing and other printing enterprises, and many other factors affecting international competition, such as U.S. cost advantages in paper supply and in proximity to the quickly changing U.S. market. The Copyright Office points out that American publishers, in choosing manufacturers for works exempt from the manufacturing clause, frequently select domestic printers and binders.

Follow-Up Measures

To be for termination of the manufacturing clause is not the alpha and omega of our Council's concern with this issue. We are also concerned with the health of the U.S. printing industry and with the job opportunities of the people who currently depend on it directly or indirectly. Also of concern is the thicket of trade barriers impeding the entry of U.S. publications and other printed matter into many foreign countries. Some of these countries are among the most vocal in their opposition to the manufacturing clause, and some have withheld participation in some of the international agreements dealing with educational and cultural materials. Besides the cost of foreign retaliation if the manufacturing clause is not terminated, we are also concerned with the effect of continuing the manufacturing clause on U.S. efforts to gain the widest adherence to international agreements dealing with copyright and other intellectual-property matters.

We urge that, in anticipation of termination of the manufacturing clause, the Administration should discuss with the U.S. printing industry and related unions the adjustment problems that might be encountered and the most effective ways to solve them, consistent with the national interest. Congress should require the Administration to report annually, for several years following repeal, on the progress made in these adjustment efforts and on legislative measures that might be necessary to facilitate such efforts. The Administration should also be required to report to Congress annually on progress made toward (a) removal of barriers impeding entry of U.S. printed matter to foreign countries, and (b) gaining adequate protection for U.S. copyright and other intellectual-property rights around the world.

Because of the legislative history of the manufacturing clause in the past decade and the decisions reached on this issue in the General Agreement of Tariffs and Trade, termination of the manufacturing clause at this time would be preferable to proposals to extend it (with or without amplification) subject to exemptions (beginning July 1, 1988) reciprocating concessions by foreign countries concerning import barriers, intellectual-property rights and internationally recognized labor standards. Adapting the manufacturing clause to such concessions and conditions might have had some merit under other circumstances. But actions and expectations in recent years concerning this issue have set the stage for terminating this provision of the copyright law and resorting to other measures (in domestic and foreign policy) to ensure equity for U.S. interests, both domestic and international. For example, a U.S. free-trade agreement with Canada should not be approved unless inter alia it includes programming the complete removal of all barriers encountered by U.S. publications and other printed matter in Canada.

Conclusion

The United States has the unenviable distinction of being the only significant book-publishing and book-manufacturing country (at least in the Free World) that controls its commerce in books and other printed matter by restricting the freedom of certain categories of copyright owners to decide where their works are to be published. Other countries do highly objectionable things affecting international trade in these and other products, and are capable of doing worse. They should be encouraged to do better, not given excuses to retain old barriers or add new ones. U.S. retention of the manufacturing clause would send the wrong signal from the world's most advanced economy and, we would like to feel, the most enlightened. Even where direct retaliation does not result, emulation harmful to U.S. interests in book publishing and other fields is a real possibility, as is increased resistance to U.S. initiatives aimed at freer international trade. Among other drawbacks, the manufacturing clause sets a poor example on how to deal with problems which industries may encounter in international competition.

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